TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~319~~. 64.

THE MISSISSIPPI RAILROAD COMMISSION, R. L. BRADLEY, S. D. McNAIR, AND J. C. KINCANNON, MEMBERS OF SAID COMMISSION, AND T. R. MAXWELL, CLERK THEREOF, PLAINTIFFS IN ERROR,

vs.

THE ILLINOIS CENTRAL RAILROAD COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED JUNE 28, 1905.

(19,821.)

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United States Circuit Court of Appeals, Fifth Circuit.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
versus
MISSISSIPPI RAILROAD COMMISSION ET AL., Appellees. } No. 1395.

Appeal from the Circuit Court of the United States for the Southern District of Mississippi.

(Original record filed Aug. 11, 1904.)
U. S. circuit court of appeals Filed Nov. 21 1904.
CHARLES H. LEDNUM, Clerk.

b UNITED STATES OF AMERICA, }
Fifth Judicial Circuit. }

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1904, and held in the court-room of said court, in the city of New Orleans, before the Honorable Don A. Pardee, the Honorable A. P. McCormick, and the Honorable David D. Shelby, United States circuit judges for the fifth judicial circuit.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
versus
MISSISSIPPI RAILROAD COMMISSION ET AL., Appellees. } No. 1395.

Be it remembered, that heretofore, to-wit: on the 21st day of November 1904, and on the 21st day of December, 1904, respectively a transcript of the record and a supplemental transcript of the record of the above styled cause from the circuit court of the United States for the southern district of Mississippi, was filed in the office of the clerk of said United States circuit court of appeals for the fifth circuit, in the words and figures following, to-wit:

1 MONDAY, May 2, 1904.

Pleas and proceedings had and done at a regular term of the circuit court of the United States in and for the southern district of Mississippi, at Jackson, in said district, begun and held, pursuant to law, in the court room of said court, present and presiding the Honorable Henry C. Niles, U. S. district judge for Mississippi.

Hon. R. C. Lee, United States attorney.
Hon. W. B. Banks, United States assistant attorney.
Hon. Edgar S. Wilson, U. S. marshal.
R. M. Davidson, court crier.

L. B. MOSELEY, Clerk.

In the Circuit Court, United States of America, Southern District of Mississippi.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
THE MISSISSIPPI RAILROAD COMMISSION ET AL. } In Equity.

Bill of Complaint.

To the Honorable Henry C. Niles, judge of said court:

Your complainant, The Illinois Central Railroad Company, respectfully shows:

That it is a corporation of the State of Illinois, resident and domiciled in the city of Chicago, and a citizen of the State of Illinois, exhibits its bill of complaint against the Mississippi Railroad Commission, and John D. McInnis, the president of said commission, A. J. Kincannon and A. Q. May, members, and John A. Webb, secretary of said commission.

Complainant further shows that the said railroad commission has its place of business and office in the city of Jackson, in the district aforesaid, and that the said John A. Webb, John D. McInnis and A. Q. May are residents and citizens of the State of Mis-
2 sissippi and district aforesaid, and that the said J. C. Kincannon is also a citizen of the State of Mississippi, residing in the northern district of said State.

Complainant would further show that it is operating an interstate line of railroad extending from the city of New Orleans in the State of Louisiana on the south, north through the said State of Louisiana and the State of Mississippi, and the States of Kentucky and Tennessee, and Indiana and Illinois to the Great Lakes of the northwest, connecting at various points with other interstate lines of railroads.

Complainant would further show that the line of railroad operated by it has been established by the Congress of the United States and is now a national highway for the accommodation of interstate commerce and the mails of the United States, and has been recognized and promoted as such, as will appear by reference to an act of Congress of September 20th, 1850, Ninth Statute at Large, page 466, granting a right of way and sections of land to the State of Illinois to aid in the construction of a railroad from the southern terminus of the Illinois and Michigan canal to a point at or near the junction of the Mississippi and Ohio rivers with branches to Chicago and Dubuque to be and remain a public highway for the use of the Government of the United States, free from all toll or other charges upon transportation of any property or troops of the United States, and on which mails of the United States will at all times be transported, and in order to aid in the construction of the said railroad, made

like grants to the State of Alabama and Mississippi respectively for the purpose of aiding in the construction of a railroad for the city of Mobile to a point at or near the mouth of Ohio river, also by reference to an act of February the 10th, 1850 of the State of Illinois chartering the complainant under the name of the Illinois Central Railroad Company and ceding to it the rights and lands granted to the State by the said act of Congress, for the purpose of constructing and maintaining within the State such trunk lines and branches describing the southern terminus as a point at the city of Cairo, and by reference to an act of Congress of June 15th, 1856, Fourteenth Statutes at Large, page 66, entitled "An act to facilitate the commercial passengers and military connections among the several States, and also by reference to the act of Congress of December 17th 1872, and of February 4th, 1883.

And complainant would further show that on the — day of —— the said complainant leased from the Chicago, St. Louis and
3 New Orleans Railroad Company a line of railroad extending from the southern bank of the Ohio river opposite Cairo southward through the State of Kentucky, Tennessee, Mississippi and Louisiana to the city of New Orleans, which said railroad had been previously formed by consolidations authorized by act of the legislature of the several States mentioned, thus forming the line of interstate railroad heretofore mentioned.

And complainant would further show that owing to the exigencies of its interstate business and the requirements of modern commerce and passenger transportation, as well as the freight and the United States mail, it has been from time to time required to shorten its schedules, and to maintain and operate certain fast through trains intended primarily and chiefly for the interstate transportation and interstate commerce.

That two of its said trains doing its interstate business are two south bound trains, one designated as train No. one and one as train No. three, number one being commonly known as the fast mail, and number three as the New Orleans and Chicago limited; that these two trains are run expressly for the purpose as aforesaid of carrying on an interstate business and for the transportation of the United States mail; that these two trains are run under special schedules for the purpose and of necessity to make close connections with other through trunk lines of railroad doing an interstate business connecting with complainant's line of road at New Orleans, in the State of Louisiana, and at Chicago in the State of Illinois and at various intermediate points; that in order to maintain the necessary schedules for the operation of these interstate trains it is impossible and wholly impracticable to stop at all stations, and further that these said trains being south bound trains only stop regularly at junction points and all such points of importance in the State of Mississippi which are necessary and which justify said stops.

And complainants would further show that these trains each carry in addition to interstate passengers and freights in the shape of ex-

press matter, the United States mail under a contract with the Government of the United States, and that by virtue of this contract for carrying the United States mail, complainant is compelled to maintain certain schedules in order to make certain and close connections with other important interstate lines, principally transcontinental lines and lines of railroad extending out of the United States.

Complainant would further show that in addition to the said fast through trains, it maintains certain other trains which afford ample and all necessary and reasonable accommodations for all stations along its line.

Complainant would further show that the town of Magnolia is a town situated on the complainant's line in the State of Mississippi 98 miles north of the city of New Orleans, and is a place of about twelve hundred inhabitants as shown by the recent census of the United States; that the following passenger trains south bound daily leaving the town of Magnolia for the city of New Orleans, to-wit: number 5 leaves Magnolia at 5:15 a. m. arriving in the city of New Orleans at 7:55 a. m.

Number 31 leaves Magnolia at 6 a. m. arriving in the city of New Orleans at 9:35 a. m.

Number 23 leaves Magnolia at 6:56 p. m. arriving in the city of New Orleans at 10:20 p. m.

Complainants would further show that number 1, the fast mail train of the complainant above mentioned, passes Magnolia at 8:45 a. m. south bound, and that number 3, the limited train above mentioned passes Magnolia at 5:20 p. m. that No. 1 reaches New Orleans at 11:25 a. m. and that number 3 reaches New Orleans at 7:55 p. m., and compliance, with said order will delay said trains and imperil the ability of complainants to comply with its contract with the United States mails, and embarrass its interstate traffic.

And complainants would further show that the said train- No. 1 and No. 3 make close connections with other lines of railroads at the city of New Orleans, and that the schedules which are adopted for that purpose and which are now maintained are about as fast as can be maintained under the present condition of complainant's road bed and equipment.

And complainants would further show that under the contracts with the United States Government for the carrying of mail it is subject to a penalty for failure to make connections with other lines of railroad for which the mails are to be delivered for further transportation.

And complainants would further show that on the 21st day of April, 1903, the Mississippi Railroad Commission promulgated an order requiring trains No. 1 and No. 3 to stop on flags at the said town of Magnolia.

A certified copy of said order is hereto attached marked Exhibit I, and prayed to be taken as a part of this bill; that in the issuance of this order the said Railroad Commission of the State of Mississippi were acting upon a supposed authority conferred upon it by

certain statutes of the State of Mississippi giving to said Mis-
5 sissippi Railroad Commission the power at its discretion to cause all trains to stop at all county seats, Magnolia being the county seat; that your complainant protested against the issuing of the said order, and showed to the railroad commission that it furnished to the town of Magnolia all reasonable and necessary railroad facilities, and that the effect of this order would be to give to the town of Magnolia greater railroad facilities than are afforded by complainant to any other town in the State of Mississippi, including the city of Jackson, the capitol of the State, excepting only the town of McComb city, which being a relay station on complainant's road, it is necessary for all trains to stop there to change the engine, and for fuel, water, etc., that the effect of the said order would be to give to the town of Magnolia 5 daily trains to the city of New Orleans, running within short intervals of each other.

Complainant would further show that by the statutory law of the State of Mississippi it is subject to the penalty of $50.00 for each and every time it fails to stop its said trains in obedience to the said order of the railroad commission above set forth. And that the said complainant would be compelled to comply with said order or to be subject to a multitude of suits for penalties arising from each and every violation of said order, and the said defendants threaten by suit to enforce the observance of said order.

Complainants aver that the said order of the said Railroad Commission of the State of Mississippi is a direct burden upon interstate commerce, and therefore a violation of and a conflict with section 8 of article one of the Constitution of the United States which provides that Congress shall have power to regulate commerce with foreign nations and among the several States; and further that the said order is a direct and unnecessary interference with the speedy carriage of the mail of the United States.

Wherefore the premises considered, and in order to prevent a multiplicity of suits against which your complainant is without complete or adequate remedy at law, complainants pray that this honorable court grant an order temporarily restraining the said defendants and each of them from enforcing or attempting to enforce by suit or otherwise the order aforesaid, and that this court will issue its summons directed to the said defendants commanding them and each of them to be and appear before the said court or one of the judges thereof at such time and place as the court may designate then and there to show cause if any they have, why the said order of the said railroad commission should not be vacated and held for naught and said injunction be made perpetual; and
6 for such other and for all and general relief, and your complainants will ever pray.

O. M. DUNN,
Ass't Gen'l Sup.

STATE OF LOUISIANA, }
Parish of Orleans. }

Personally appeared the undersigned O. M. Dunn, who being duly sworn on oath says,

That he is the assistant general superintendent of said complainants The Illinois Central Railroad Company named in the foregoing bill; that he has read the bill and knows the contents thereof and that the facts therein stated of his knowledge he knows to be true, and those upon information and belief, he verily believes to be true.

Sworn to and subscribed before me, the 5th day of May, 1903.

[L. S.] HUNTER C. LEAKE, Not. Pub.

Indorsed: 702, Illinois Central R. R. Co. *v.* O. bill. Mississippi R. R. Commission *et als.* Filed May 6, 1903. L. B. Moseley, clerk. Mayes & Harris, sol's for complainant.

EXHIBIT 1.

APRIL 21ST, 1903.

In the Matter of THE CITIZENS OF MAGNOLIA, MISS., }
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. }

Praying this commission to order the said Illinois Central Railroad Company to make Magnolia, Miss., a regular stop for trains Nos. one, three and four (1, 3, 4) the same having come on to be heard, the complainants being present and heard and the defendant the I. C. R. R. Co. by its assistant gen'l superintendent (O. M. Dunn) being also present and heard, it was ordered that the prayer of the petitioners be granted in part as follows, viz.: That trains Nos. one, three be required to stop on flag, and to be effective on — after the 1st day of May, 1903, that in so far as the petition refers to number four, the same is denied.

JNO. A. WEBB, Secretary.

7 I, John A. Webb, secretary of the Railroad Commission, State of Mississippi, certify that the above is a true and correct copy of the order as issued and passed by said railroad commission on the 21st day of April, 1903.

[SEAL.] JNO. A. WEBB, Sect.

* * * * * * *

8 Upon reading and considering the verified bill presented in the above entitled cause, jurisdiction thereof is hereby entertained and the bill is ordered to be filed; and it is thereupon ordered that the said defendants named in said bill, and each of them be and appear before me at the United States court room in

the city of Jackson, Mississippi, on the 20th day of May, 1903, at ten o'clock then and there to show cause, if any they can, why an injunction should not be granted as prayed in the said bill.

It is further ordered that the defendants, and each of them, be, and they are hereby, severally and jointly restrained, temporarily, from enforcing or attempting to enforce, by suit or otherwise, the order made by the said railroad commission on the 21st day of April, 1903, requiring trains No. 1 and No. 3 of the Illinois Central Railroad Company to stop on flag in the town of Magnolia, in the State of Mississippi, in accordance with the prayer of the bill for a temporary restraining order; and this order shall remain in force until the hearing or until otherwise ordered by this court.

It is further ordered that the complainant, The Illinois Cen-
9 tral Railroad Company shall execute and file in this cause a bond in the sum of five hundred dollars ($500.00) to pay the costs of this proceeding in case of an adverse decision of this cause, and to perform such other judgment as this court shall render herein.

It is further ordered that the defendants, and each of them, be served with this order at least five days before the hearing, within this district or within any portion or division of this district.

Dated and signed, this the 6th day of May, 1903.

(Signed) H. C. NILES,
U. S. Dist. Judge.

To the U. S. marshal to execute and return.

L. B. MOSELEY, Clerk.

(Indorsed:) 702. No. 655. Entered page 144. Illinois Central R. Rd. Co. *vs.* Mississippi R. R. Commission *et al.* Restraining order.

* * * * * * *

10 Amendment to O. Bill.

And complainants aver that the said order of the said Railroad Commission of the State of Mississippi is a direct burden upon interstate commerce and therefore violative of and in conflict with section 8 of article [illegible] of the Constitution of the United States which provides that Congress shall have power to regulate commerce with foreign nations and among the several States and further that the said order is a direct and unnecessary interference with the speedy and uninterrupted carriage of the mails of the United States.

The line of railroad operated by complainants has been established by Congress — a national highway for the accommodation of interstate commerce and of the mails of the United States and has been recognized and promoted as such as will be seen by act of Congress of Sept. 20th, 1850, 9th Statute at Large, page 466, granting a right of way and sections of land to the State of Illinois to aid in

the construction of a railroad from the southern termination of the Illinois and Michigan canal, to a point at or near the junction of the Mississippi and Ohio rivers with branches to Chicago and Dubuque, to be and remain a public highway for the use of the Government of the United States, free from toll or other charges upon the transportation of any property or troops of the United States and on which mails of the United States should at all times be transported, and in order to aid in the construction of said railroad, made like grants to the States of Alabama and Mississippi respectively for the purpose of aiding in the construction of a railroad from the city of Mobile to a point near the mouth of the Ohio river.

On Feb. 10th, 1850, the State of Illinois chartered The Illinois Central Railroad, complainant herein, and ceded to it rights and lands granted to the State by the act of Congress for the purpose of constructing and maintaining with- the State such trunk lines and branches, describing the southern terminus at a point at the city of Cairo.

By act of Congress of June 15th, 1866, 9th chapter 124, 14th Statute at Large 66, entitled, "An act to facilitate the commercial, postal and military connections among the several States."

By acts of Congress, Dec. 17, 1872, Feb'y 14, 1883.

11 Answer and Demurrer.

In the Circuit Court United States of America, Southern District of Mississippi.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
vs.
THE MISSISSIPPI RAILROAD COMMISSION ET ALS. } In Equity.

John D. McInnis, president of the Mississippi Railroad Commission, J. C. Kincannon and A. Q. May, members, and John A. Webb, secretary of said commission, respondents, for answer to such parts of the bill of complainant filed against them in this caose, or to such parts thereof as they are advised are material, and objections to the said bill for the many irregularities and insufficiencies therein contained, answering, say:

Respondents admit the existence of the several acts of the Congress of the United States granting lands to promote and build an interstate railway from the Great Lakes north to the gulf of Mexico on the south; and they admit the corporate existence in the several States of the said complainant. But respondents are advised that the said several acts of Congress and of the State legislatures and the said charters speak for themselves, and that it is not necessary for them to answer or plead to the allegations of said bill setting out the supposed effect of said acts of Congress, of State legislatures, and charters upon the subject of this controversy.

Respondents deny that the said complainant furnishes to the town of Magnolia adequate accommodations for travel south from that place and deny expressly that compliance with the order of the said railroad commission of April 21st, 1903, would embarrass in any manner complainant's interstate business or imperil its ability to carry out its contract with the United States as to mails; and respondents deny that said order is unreasonable and that it is a direct burden upon interstate commerce and that it is a direct and unnecessary interference with the speedy carriage of the mails of the United States; and the respondents further deny that the said order is unreasonable and that compliance therewith would unnecessarily or unreasonably hinder or embarrass its interstate business or its carriage of the United States mails.

And for further defense to the said bill filed against them in this cause, these respondents composing the Mississippi Railroad Commission demur to all of said bill not expressly answered otherwise herein because the said Mississippi Railroad Commission is a legally constituted body, having full supervision over all railroads
12-25 in the said State of Mississippi and the order of April 21st, 1903, was regularly and legally passed and promulgated, all of which appears from complainant's bill, in the exercise of its statutory powers and the said complainant in its said bill shows no reason why the said order should not be enforced against the complainant. Wherefore, they pray judgment of the court whether they shall make any other or further answer to the said parts of said bill demurred to.

Now having fully answered, these respondents pray that the said injunction be dissolved and the said bill dismissed and that they be discharged with their proper costs in this behalf expended.

A. Q. MAY.

STATE OF MISSISSIPPI,
County of Hinds.

Before me, A. Q. May, a member of the Mississippi Railroad Commission personally appeared, who being duly sworn on oath says that — if a member of the Mississippi Railroad Commission and one of the defendants in the cause of The Illinois Central Railroad Company *vs.* Mississippi Railroad Commission; that he has read the answer above herein and knows the contents thereof and that the facts therein stated of his own knowledge he knows to be true and those stated upon information and belief he believes to be true. And affiant further states that the demurrer interposed is not interposed for delay.

This June 12th, 1903.

[SEAL.]

A. C. JONES,
Notary Public.

I hereby certify that in my opinion the above demurrer is well founded in point of law.

J. N. FLOWERS,
Ass't Attorney General, Solicitor
for Demurrants and Respondents.

(Indorsed:) 702. Filed April 27, 1904. L. B. Moseley, cl'k.

* * * * * * *

26 In the Circuit Court of the United States for the Southern District of Mississippi.

ILLINOIS CENTRAL R. R. COMPANY
vs.
MISSISSIPPI RAILROAD COMMISSION. } No. 702.

It is agreed between counsel for complainants and defendant that the testimony on the final hearing of this cause and on the motion to dissolve the injunction herein, may be taken in open court with a stenographer, and that complainant and defendant shall each pay one-half of the cost of a stepographer for taking down the same, and that if either desires to use the evidence on appeal or otherwise it shall pay for transcribing the stenographer's notes. It is
27 further agreed that upon any appeal or writ of error the stenographer's notes so written out and signed by him, without the signature of the witnesses, shall be taken to be the depositions of the witnesses in said cause, duly taken in pursuance of the forms of law and that all formalities in respect thereto are waived, and that said depositions so taken, shall constitute when written out and certified by the stenographer, a part of the record of said cause as if duly taken under the rules of court and practice in chancery and may be as such deposition transcribed into and become a part of any record of said cause on appeal or writ of error.

MAYES & LONGSTREET,
Sol'rs for Compl'ts.
GREEN & GREEN,
Sols. for Resp'ts.

Opinion.

In the Circuit Court of the United States.

ILLINOIS CENTRAL R. R. Co., Complainant,
vs.
THE MISSISSIPPI R. R. COMMISSION ET AL. } In Equity.

The I. C. R. R. Co., complainant in this cause, exhibits its bill of complaint against John D. McInnis, president, J. C. Kincannon and A. Q. May, members, and John A. Webb, secretary of the Mississippi

R. R. Commission, and the Mississippi R. R. Commission; that it is a corporation of the State of Illinois, resident and domiciled in the city of Chicago; that it is operating an interstate line of railroad, extending from the city of New Orleans in the State of Louisiana, on the south, north through the said State of Louisiana and the States of Mississippi, Tennessee, Kentucky and Illinois, to the Great Lakes of the North and West, connecting at various points with other interstate lines of railroad; that the line of railroad operated by complainant has been established by the Congress of the United States and is now a national highway for the accommodation *for* interstate commerce and carrying the mails of the United States, and has been reorganized as such (see act of Congress, 9th Statute at Large, page 466; see also acts of Congress, Dec. 17th, 1872, and Feb'y 14, 1883); that complainant leased from the Chicago, St. Louis & New Orleans Railroad Company a line of railroad extending from the southern bank of the Ohio river, opposite Cairo, southwest through the States of Kentucky, Tennessee, Mississippi and
28 Louisiana to the city of New Orleans, which said railroad had been previously formed by consolidation authorized by acts of the legislature of the several States mentioned, and forming the line of interstate railroad heretofore mentioned; that owing to the exigencies of its interstate business, and the requirements of modern commerce and passenger transportation, as well as freight and the United States mail, it has been required from time to time to shorten its schedules, and to maintain and operate certain fast through trains, intended primarily and chiefly for interstate transportation and interstate commerce; that two of its trains doing its interstate business are two southbound trains, one distinguished as train No. 1 and one as train No. 3, No. one (1) being commonly known as the "fast mail," and No. 3 as the "New Orleans and Chicago limited;" that these two trains are run expressly for the purpose of carrying on an interstate business, and for the rapid transportation of the United States mail; that they are run under special schedules for the purpose of making close connections with other through trunk lines of railroads doing interstate business, connecting with complainant's line of road at New Orleans in the State of Louisiana and at Chicago, in the State of Illinois, and at various intermediate points; that in order to maintain the necessary schedules for the operation of these interstate trains it is impossible, and wholly impracticable to stop at all stations, and that these trains, being southbound trains, only stop regularly at junction points, and all such points of importance in the State of Mississippi which are necessary and which justify said stops; that these trains each carry in addition to interstate passengers and freights in the shape of express matter, the United States mails under a contract with the Government of the United States, and by virtue of this contract is compelled to maintain certain schedules in order to make close connections with other important interstate lines, principally transcontinental, and lines of railroad extending out of the United States. Complainants aver that in addition to

the said fast through trains, it maintains other trains which afford ample and all necessary and reasonable accommodations for all stations along its line; that Magnolia is a town of a population of one thousand and thirty-eight, as shown by the census of 1890; is the county seat of Pike county, Mississippi, and 98 (ninety-eight) miles north of the city of New Orleans, in the State of Louisiana; that the following passenger trains southbound, daily, No. 5 leaves the town of Magnolia about 5:15 a. m., arriving in the city of New Orleans at 7:50 a. m.; that No. 31 leaves Magnolia at 6 a. m. arriving in the city of New Orleans at 9:35 a. m.; that No. 23 leaves
29 Magnolia at 6.56 p. m., arriving in the city of New Orleans at 10:20 p. m.; that No. one, the "fast mail train," passes Magnolia at 8:45 a. m., southbound, and that No. 3, the limited train before mentioned, passes Magnolia at 5:20 p. m. and reaches New Orleans at 7:55, and that both No. 1 and No. 3 make close connection with other lines of railroad at the city of New Orleans, and the schedules which are now maintained are about as fast as can be maintained under the present condition of its roadbed and equipments; that complainants are subject to a penalty for failure to make connections with other lines of railroad for which the mails are to be delivered for further transportation; that on the 21st day of April, 1903, the Mississippi Railroad Commission promulgated an order requiring trains No. 1 and No. 3 to stop on flags at said town of Magnolia; that said railroad commission were acting upon authority conferred upon it by certain statutes of the State of Mississippi giving to said Mississippi R. R. Commission the power at its discretion to cause all trains to stop at all county seats, Magnolia being a county seat; that complainants protested against the issuing of said order and showed the said R. R. commission that it furnished to the town of Magnolia all reasonable and necessary railroad facilities; that the effect of this order would be to give to the town of Magnolia greater railroad facilities than are afforded by complainant to any other town in the State of Mississippi, excepting only McComb city, which being a relay station on complainant's road, it is necessary for all trains to stop there to change engines and for fuel and water, etc.; that the effect of said order would be to give to the town of Magnolia five daily trains to the city of New Orleans running within short intervals of each other; that by the statutory laws of the State of Mississippi, it is subject to a penalty of $50.00 for each and every time it fails to stop its said trains in obedience to the said order of said railroad commission as aforesaid, and said complainant would be compelled to comply with said order or be subject to a multitude of suits for penalties arising from each and every violation of said order; that said commission is threatening by suit to enforce said order; complainants aver that said order of said Railroad Commission of the State of Mississippi is a direct burden upon interstate commerce, and, therefore, a violation of and in conflict with sec. 8 of article one of the Constitution of the United States; that in order to prevent a multiplicity of suits against which com-

plainant is without complete or adequate remedy at law, this suit is brought. To which complaint, the defendant Railroad Commission "answer and demur," admitting the existence of the
30 several acts of Congress of the United States, granting lands to promote and build an interstate railway from the Great Lakes on the north to the gulf of Mexico on the south, and the corporate existence in the several States of complainant, but deny expressly that complainant furnishes to the town of Magnolia adequate accommodations for travel south from Magnolia, and deny expressly that compliance with said order would embarrass in any manner complainant's interstate business or interfere with its contract with the United States as to mails, or that said order is unreasonable, or a direct burden upon interstate commerce, or an interference with the speedy carriage of the mails of the United States, and respondents demur to all of said bill not expressly answered because the said railroad commission is a legally constituted body, having full supervision over railroads in the State of Mississippi, and that the order of April 21st, 1903, was regularly and legally passed and promulgated in the exercise of its statutory powers.

Few classes of cases have become more common of recent years than those wherein the police power of the State over vehicles of interstate commerce has been drawn in question. See Cleveland Ry. Co. *vs.* Illinois, 177 U. S. 516 to 523. Railways are bound to provide primarily and adequately for the accommodation of those to whom they are directly tributary, and who not only have granted to them their franchises, but who may have contributed largely to the construction of the road; they are bound to do no more than this, and may then provide special facilities for the accommodation of through traffic. Lake Shore & Michigan Southern Railway *vs.* Ohio, 173 U. S. 285. In Cleveland Ry. Co. *vs.* Illinois, 522, Mr. Justice Brown uses the following language: "That, after all local conditions have been adequately met, railways have the legal right to adopt special provisions for through traffic, and legislative interference therewith is unreasonable, and an infringement upon that provision of the Constitution which we have held requires that commerce between the States shall be free and unobstructed."

Respondents deny that Magnolia has adequate accommodation for travel south of that place, and that the order of April 21, 1903, embarrasses in any manner complainant's interstate business or imperils its ability to carry out its contract with the United States as to mails, and in support of this denial show by the affidavits of citizens of Magnolia and others, that "they do not think" or "consider" that the accommodation furnished by complainant for travel to and from Magnolia are adequate, and especially is this true from Mag-
31 nolia south to all points beyond the limits of the State of Mississippi; that persons desiring to go to New Orleans, Louisiana, in the afternoon are bound to take a local passenger train which is designed altogether for local travel, which has second class accommodations as compared to train No. 3 which passes

Magnolia late in the afternoon and which said local passenger train stops at every station, however small, between Magnolia and New Orleans and gets to New Orleans at night after business hours and after trains out of New Orleans to other points have gone; that there is a large amount of travel from Magnolia for a place of its size; that its population is made up largely of permanent residents, people who are able to travel and who especially make frequent business and other trips to New Orleans, the principal wholesale market for the people of Magnolia and country merchants in the surrounding territory; that said territory is prosperous, owned and controlled largely by "white planters," all of whom make the town of Magnolia their headquarters; that complainant's interstate trains No. 1 and 3 now make regular stops in the State of Mississippi at such points along its line as Sardis, Grenada, Durant, Winona, Canton, Jackson, Wesson, Hazlehurst, McComb city, and on certain days at Summit, not a county seat; that said order of April 21, 1903, of the railroad commission was intended for those persons desiring to travel beyond the limits of the State of Mississippi from Magnolia and the surrounding country and not intended to any extent more than absolutely necessary to effect the interstate business of said railroad company or its carriage of the United States mails.

The evidence in this cause shows that trains No. 1 and No. 3 are run primarily for the accommodation of interstate business and for the carriage of the United States mail; that No. 1 is commonly known as the "fast mail" southbound, and No. 3 as "the Chicago and New Orleans limited;" that they are made up in Chicago and run south through the States of Illinois, Kentucky, Tennessee, Mississippi and Louisiana, "making connections at junction points with various lines of railroad running east and west through the States mentioned" and particularly with the Southern Pacific railroad in the city of New Orleans in the State of Louisiana; with which railroad the Illinois Central Railroad Co. has through traffic arrangements in the carriage of interstate business from Chicago in the State of Illinois to the Pacific coast and points out of the United States; that train No. 1 is run to make connection with what is known as the "Sunset limited" on the Southern Pacific railroad; and train No. 3 is run to make connection with what is known as the "Pacific express" on the Southern Pacific railroad, both of which said trains are fast through trains engaged in interstate
32 travel; that to make connections and meet competition with other railroads it is necessary to maintain very fast schedules; that the schedules of No. 1 and No. 3, including stops, is about 40 miles an hour, which is as fast a schedule as can be maintained with the present equipment of the railroad; that in order to make this schedule these trains carry dining cars, and make provisions for accommodating passengers so that stops for meals are avoided.

The evidence undisputed shows that trains No. 1 and No. 3, after leaving the city of Memphis, in the State of Tennessee, stop in the State of Mississippi, at the towns of Sardis, and Grenada, and after

leaving Grenada, No. 3 stops at Winona, Durant, Canton, Jackson, Crystal Springs, Hazlehurst, Brookhaven and McComb city, and that after leaving McComb city said trains make no other stops in the State of Mississippi. (See exhibit to O. M. Dunn's affidavit.) These "exhibits or time tables" also show all other southbound passenger trains now in operation at the time of the issuance of the order of *the order of* Mississippi Railroad Commission. The proof is that Grenada, Winona, Durant and Jackson, Miss., are junction points at which all trains stop; that the towns of Canton and McComb city are the ends of divisions at which all trains stop to change engines and crews, and that — the town of Crystal Springs, the trains stop for water; that trains stop at Brookhaven and Hazlehurst, points of greater importance than Magnolia, but not for the purpose of giving any preference to these towns, but for the purpose of affording passenger facilities the same as those given Magnolia and points south of McComb city. See Exhibit No. 2, and "Dunn's affidavit." As to train No. 3, New Orleans accommodation,—which "train leaves McComb city at 5:45 a. m. and arrives at New Orleans at 9:35, returning north, leaves New Orleans at 3:50 and arrives at McComb city at 7:50," this train is the regular passenger train having passenger coaches and carrying baggage, and gives to the town of Magnolia, together with the other trains which stop there, southbound, three passenger trains daily to the city of New Orleans. "See Exhibit No. 2."

The evidence also shows that there are other railroad lines leading to New Orleans with which the Illinois Central endeavors to make connection with trains No. 1 and No. 3, particularly the Louisville & Nashville railroad, running from New Orleans to Mobile and connecting with roads extending into the State of Florida, and under existing schedules there are only twenty minutes between the leaving time of the Louisville & Nashville and the arriving time of the trains of complainant, and passengers and mails for
33 points on the Louisville & Nashville and Florida, have to be transferred across the city of New Orleans and the connection cannot be made unless the trains on the Illinois Central railroad arrive on schedule time.

I think it is right for the State railroad commission to take into consideration all the circumstances affecting passenger travel within the limits of the State, and as far as practicable, make such regulations as are just to all. But it seems to me that the power attempted to be exercised under the facts here presented would operate as a serious restriction upon the speed of trains engaged in interstate traffic. If the commission can counsel the trains No. 1 and No. 3 to stop at Magnolia after complainant furnishes a sufficient number of trains daily each way to accommodate all the local and through business along the line of the road, it is difficult to see why they may not counsel them to stop all trains at every station, a requirement which would be practically destructive of through travel where there were competing lines unhampered by such regulations. Quoting from an

opinion of the Supreme Court of the United States already cited, where Mr. Justice Brown says, "We are not obliged to shut our eyes to the fact that competition among railways for through passenger traffic has become very spirited, and we think they have a right to demand that they shall not be unnecessarily hampered in their efforts to obtain a share of such traffic. It is evidence, however, that neither the greater safety of their tracks, the superior comfort of their coaches or sleeping berths, or the excellence of their tables would insure them such share, if they were unable to compete with their rivals in the matter of time. The great efforts of modern engineering have been directed to combining safety with the greatest possible speed in transporting, both by land and water; the public demands this; the railway and steamship companies are anxious in their own interest to furnish it, and local legislation ought not to stand in the way of it." I have been unable to find any authority that is opposed to the principle "that after all local conditions have been adequately met, railways have the legal right to adopt special provisions for through traffic, and legislative interference therewith is unreasonable, and an infringement upon that provision of the Constitution which we have held requires that commerce between the States shall be free and unobstructed." 177 U. S. 522. I think under all the facts in this case the complainants are entitled to the relief prayed for.

I hereby certify that the foregoing seven and a half pages contain a true copy of the original on file in my office at Jackson, Miss.
34 Witness my official signature and seal of said circuit court hereto attached, at office, at Jackson, Miss., this 9th day of July, A. D. 1903.

[SEAL.] L. B. MOSELEY, Clerk.

* * * * * * *

In the Circuit Court of the United States.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
vs.
MISSISSIPPI RAILROAD COMMISSION ET ALS., Defendants. } In Vacation.

UNITED STATES OF AMERICA,
Southern District of Miss.

Be it remembered, that on the 10th day of June, 1903, pursuant to notice thereunto duly given by the complainant in this cause and also by agreement of the parties thereto, came on to be heard the above entitled cause on the application of the complainants for an injunction as prayed in the bill of complaint; and the court having heard the said application on the pleadings herein, and on the affidavits and other proofs presented in support thereof, and in oppo

sition thereto, did take the said cause and motion for preliminary injunction under advisement; and on the 6th day of July, 1903, also in vacation, the court being fully advised and satisfied in the premises, doth order, adjudge and decree as follows:

First. That the application of the complainant herein be sustained and its motion for a preliminary injunction shall be, and the same is hereby granted, and that the Mississippi Railroad Commission and John D. McInnis, president of the same, and J. C. Kincannon and A. Q. May, members thereof, and John A. Webb, secretary thereof, be and the same are hereby, each of them and all of them, restrained from enforcing or attempting to enforce pending this cause, and until final determination thereof by suit or otherwise, the order made by the said commission on the 21st day of April, 1903, whereby the complainant, The Illinois Central Railroad Company, was required to stop trains No. 1 and trains No. 3 of said company on flag at the town of Magnolia, in the State of Mississippi.

Secondly. That this cause be, and the same is hereby, retained on the equity docket of this court to be further heard on the final proofs.

35 Thirdly. That the Illinois Central Railroad Company, complainant, do within sixty days from this date, execute its bond for the performance of such judgment as the court shall render in this cause; said bond to be signed by two or more solvent sureties and approved by the clerk of this court and filed amongst the papers of this cause.

Fourthly. That the clerk of this court do enter this order in full on the minutes of this court kept in vacation.

Ordered, adjudged and decreed, this the 16th day of July, 1903.

H. C. NILES, Judge.

* * * * * * *

Motion to Dissolve Injunction.

In the Circuit Court of the United States for the Southern District of Mississippi.

ILLINOIS CENTRAL RAILROAD CO.
vs.
THE MISSISSIPPI RAILROAD COMMISSION. } No. 702.

Comes the Mississippi Railroad Commission by William Williams, attorney general of the State of Mississippi, and moved the court to dissolve the preliminary injunction heretofore granted in this cause, and to dismiss this suit, and for grounds assigns:

1. This is a suit against the State of Mississippi, and the injunction herein restrains said State in its sovereign capacity from executing its police powers through its officers, Mississippi Railroad Commission, and the same is forbidden by the 11th amendment to the Constitution of the United States.

2. Said injunction was prematurely applied for.

3. This court has no jurisdiction as a court of equity to restrai by injunction the orders of the commission. As a commission could only enforce its orders through the process of the State circui or chancery courts (Code 1892, sec. 4286), and in which every rig of complaint could be protected.

4. The penalties alleged as ground for equity jurisdiction to avoi multiplicity of suits do not accrue to said railroad commission, b to the State of Mississippi and to the persons injured.

36 5. The order complained of does not give rise to a contr versy in which the Constitution and laws of the United Stat are drawn in question by a State statute or other authority givi jurisdiction to the Federal court as a Federal court; but the questio is one of fact, viz: whether there has been an abuse of discretion b the said commission in making said order; the statute itself, s 3550, Code 1892, is not assailed as unconstitutional.

6. The injunction should be dissolved on the pleadings and proof

7. There is no equity on the face of the bill.

8. And for other reasons to be stated at the hearing.

WILLIAM WILLIAMS,
Attorney General of the State of Mississippi.
GREEN & GREEN,
Of Counsel for Defendant.
MAYES & LONGSTREET, Contra.

We acknowledge service of a copy of the foregoing motion.

MAYES & LONGSTREET,
Sols. for Illinois Cen. R. R. Co.

* * * * * * *

Supplemental Answer.

In the Circuit Court of the United States for the Southern Distri of Mississippi.

ILLINOIS CENTRAL RAILROAD CO.
vs.
THE MISSISSIPPI RAILROAD COMMISSION. } No. 702. In Equity.

Now comes the Mississippi Railroad Commission, composed J. C. Kincannon, R. L. Bradley and S. D. McNair, and —— Maxwe its clerk, and first expressly saving and reserving, etc., for suppl mental answer unto said bill against your respondent filed, by conse as well as leave of the court first had and obtained, further answe ing unto said bill, would respectfully state:

37 I.

That your respondent-, J. C. Kincannon, R. L. Bradley and S. McNair, under and by virtue of the laws of the State of Mississip

to that end duly passed and enacted, were at the last regular election duly and regularly elected as officials of the State of Mississippi as State railroad commissioners, and that they, and each of them, having first duly performed all duties and conditions of them, or either of them required, duly and regularly in pursuance of said election and qualification, entered upon the discharge of their official duties as such, and have been and are now in possession of said offices, exercising the same in accordance with the laws of the State of Mississippi, and that your respondent, Maxwell, was duly and regularly elected clerk of said railroad commission, and is now, and has been since his election, in active discharge of his duties.

II.

That under the constitution and laws of the State of Mississippi, your respondent said Mississippi Railroad Commission, is constituted a court and commission with exclusive plenary jurisdiction over certain matters to them under and by virtue of the laws and constitution of the State of Mississippi confided.

That under and by virtue of section 3550 of the Annotated Code of 1892, of the State of Mississippi, then and now in force, full and exclusive jurisdiction was vested in your respondents under and by virtue of the following provisions:

"Every railroad shall cause each and all of its passenger trains to stop for passengers at all county seats at which it has a depot, at the discretion of the railroad commission."

And your respondents would respectfully represent unto your honor, that after a hearing upon the merits, as hereinafter more particularly set out, your respondent, said Railroad Commission, after proceedings duly and regularly before it had and done, on a petition duly and regularly filed with it, and notice by it duly and regularly served upon said complainant, commanded said complainant at a time and place therein specified, in accordance with law, to appear before it, and show cause, if any it could, why said trains No. 1 and No. 3 should not stop at said county seat, Magnolia, then and there in pursuance of said notice, said complainant appeared before the commission and court vested by the laws of the State of Mississippi with sole exclusive and plenary jurisdiction in that behalf, and then and there on the issues then and there presented by said petition as to whether said trains Nos. 1 and 3 should stop at
38 said Magnolia, it was then and there determined, after issued joined, evidence introduced and argument of counsel, that said trains Nos. 1 and 3, should stop at said town of Magnolia on flag, and then and there was so determined, decided and adjudged in said cause before said commission pending, that said trains Nos. 1 and 3, should so stop and that duly and regularly said finding, decision and judgment, was made and entered strictly in pursuance of the discretion in this respondent vested, and under and by virtue of jurisdiction to it by law duly and regularly confided.

III.

And your respondent would further represent unto your honor, that the aforesaid finding, decision and adjudication, was in all particulars and respects due and regular, and further that the same was, and still is, conclusive and binding on the complainant herein and *re- adjudicata* of the issue herein presented, and your respondents respectfully represent that said complainant cannot again litigate in this court this same identical issue with your respondent, and that said finding, adjudication and decision still stands unreversed and unappealed from, and is in all respects now in full force and virtue and that said complainant herein cannot collaterally and indirectly attack said finding, decision and adjudication, made on the issue here presented, and that this court is without jurisdiction to determine or review in any wise the finding, decision and adjudications made by your respondent under and by virtue of said section 3550, and the jurisdiction in your respondent in pursuance thereof vested, and that the jurisdiction of your respondent- under said section is exclusive and plenary.

IV.

That said finding, decision and adjudication hereinbefore set out is not unjust, unreasonable or arbitrary, and that the same was not obtained by fraud, but on full hearing and investigation of the merits therein presented, and cannot as your respondents are informed and believe, be reviewed and set aside by this court on collat-ral proceedings to that end attempted to be had.

V.

That this court as a Federal court is without jurisdiction in equity, to restrain the said Railroad Commission of the State of Mississippi from enforcing the said order by suit in the State chancery or circuit courts, and said preliminary injunction herein was
39 improvidently granted for these reasons in addition to those stated in the answer herein.

1. This is a suit against the State of Mississippi, and the injunction herein restrains said State in its sovereign capacity from executing its police power through its officers, Mississippi Railroad Commission, and the same is forbidden by the 11th amendment to the Constitution of the United States.

2. Said injunction was prematurely applied for.

3. This court has no jurisdiction as a court of equity to restrain by injunction the railroad commission for bringing suit in the State courts to enforce the orders of the commission, because of sec. 720, U. S. Revised Statutes, and said 11th amendment to the Constitution of the United States. As a commission it could only enforce its orders through the process of the State circuit court or chancery

court, Code 1892, sec. 4286, and in which every right of complainant could be protected.

4. The penalties alleged as grounds for equity jurisdiction to avoid multiplicity of suits do not accrue to said railroad commission, but the State of Mississippi, and to the persons injured, and such suits cannot be enjoined in equity in this court.

5. The order complained of does not give rise to a controversy in which the Constitution and laws of the United States are drawn in question by the State statute or other authority giving jurisdiction to the Federal court as a Federal court; but the question is one of fact, viz: Whether there has been an abuse of discretion by the said commission in making said order; the statute itself, sec. 3550, Code 1892, is not assailed as unconstitutional.

6. The injunction should be dissolved on the pleadings and proofs.

7. There is no equity on the face of the bill.

8. And for other reasons to be stated at the hearing.

VI.

Wherefore your respondent, having fully and freely answered all the allegations of said bill by them deemed to be material and necessary to be by them, or any of them answered, respectfully prays that they may be discharged, and that said injunction may be dissolved and all costs herein taxed against said complainant, and as in duty bound, etc.

We hereby waive verification of the foregoing supplemental answer, and consent that the same may be filed without prejudice to a trial of this cause on June 3rd, 1904, the day set therefor, and that the time for taking depositions in regard thereto is waived.

MAYES & LONGSTREET,
Solicitors for Complainants.

On reading the foregoing supplemental answer, it is ordered that the clerk file the same.

H. C. NILES, Judge.

(Indorsed:) No. 702. In equity. Illinois Central Railroad Company *vs.* Mississippi Railroad Commission. Supplemental answer filed June 2, 1904. L. B. Moseley, clerk.

UNITED STATES OF AMERICA,
Southern District of Mississippi.

In the Circuit Court of the United States. In Equity.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
MISSISSIPPI RAILROAD COMMISSION ET ALS.

This replicant, saving and reserving *of* itself all and all manner of advantage of exception which may be had and taken to the mani-

fold errors, uncertainties, and insufficiencies to the answer of the defendants, for replication thereunto, saith, that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive and insufficient in law to be replied to by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct and *imply* as in and by its said bill it has already *proved.*

MAYES & LONGSTREET,
Solicitors for Replicant.

* * * * * * *

41 By consent of the court it is agreed in the above entitled case that the testimony in this case is taken *vivo vorce,* and by a stenographer in open court, and the testimony so taken by the stenographer is to be taken by him and approved by his honor, the judge, and shall be for all intents and purposes a part of the record in this cause as if the same had been formally and regularly taken by a commissioner appointed for that purpose.

The complainant introduced in evidence the order of the commission, marked Exhibit 1, to the original bill.

The complainant next introduced in evidence the charter of the Illinois Central Railroad Company.

The complainant next introduced in evidence the four hundred year lease, made in 1882, by the Chicago, St. Louis and New Orleans Railroad Company to the Illinois Central Railroad Company.

The complainant introduced in evidence the lease of the Mississippi and Tennessee railroad—Memphis division now called.

Mr. O. M. DUNN, being duly sworn as a witness on behalf of the complainant, testifies as follows:

Q. On behalf of the railroad company, Mr. Dunn, please state whether you are an official of the Illinois Central Railroad Company, and if so, what?

A. Yes, sir; I am superintendent of the Louisiana division.

Q. How long have you occupied that office, Mr. Dunn, under this present appointment?

A. About five months, under the present appointment; prior to that, for two years I was assistant general superintendent.

Q. Under the present appointment, I understand you to say, about five months?

A. Yes, sir; prior to that for about two years, as assistant general superintendent.

Q. For about two years?

A. Yes, sir, a year and ten months, really.

Q. Do you remember exactly when you were appointed assistant general superintendent?

A. March the 1st, 1902.

Q. About March 1st, 1902?

A. Yes, sir.

42 Q. Prior to your appointment as assistant general superintendent did you have any official connection with the road?

A. Yes, sir, as superintendent of the Louisiana division for about nine years.

Q. Mr. Dunn, I will get you to state whether in your capacity of assistant general superintendent, what jurisdiction you had over the line of the Illinois Central Railroad Company?

A. I had charge as assistant general superintendent of the lines south of the Ohio river, extending from New Orleans to Louisville, by way of Memphis and by way of Jackson, Tennessee, and the Ohio river opposite Cairo.

Q. I will get you to state whether, in your official capacity, you had anything to do with the making of schedules of trains, or regulating the running of the same, if so what?

A. Generally the schedules of through trains are determined by the general officers in Chicago. It was my duty to see that local schedules were made in accordance with their instructions.

Q. State whether your duties required you to be familiar with these schedules of the running of these trains?

A. Yes, sir.

Q. Explain what train number 1 was—its nature and its purposes?

A. No. 1 was the Chicago and New Orleans fast mail. It was put on in 1890, I think, by an arrangement with the Government, as I understand. It handled mail between Chicago and New Orleans. That train was put on upon an agreed time with the Government, as I understand.

Q. What direction did that train run—north or sonth?

A. South.

Q. Where was it made up?

A. Chicago.

Q. What sort of travel was it intended to accommodate—local or through?

A. Strictly the through business.

Q. What do you mean by "through business?"

A. I mean passengers traveling long distances, between principal business centers and interstate traffic.

Q. Well, now, what was the character and nature of train number 3?

A. Train number three was, and is, the Chicago and New Orleans limited. It is a first-class train in every respect; put on on a fast schedule to accommodate the through passenger traffic, and it also carried mails.

Q. It carries mail for the United States Government?

A. For the United States Government; yes, sir.

43 Q. What does that expression in the style of a train mean when you speak of its being a limited train?

A. It means the time is limited; it designates it as a special important through train.

Q. Where is that train made up—number three?

A. Chicago.

Q. And runs where?

A. To New Orleans. It has a Cincinnati and Louisville connection—it had at that time at Memphis.

Q. What connection, if any, did those two trains make in New Orleans?

A. They connected with the Southern Pacific; that was the principal connection, and so far as the mails are concerned, with the Louisville and Nashville.

Q. Now, the Southern Pacific railroad running where?

A. From New Orleans to San Francisco.

Q. And the Louisville and Nashville runs where?

A. From New Orleans to Cincinnati.

Q. Do you know anything about whether the Illinois Central Railroad Company had a traffic arrangement with the Southern Pacific Railroad at that time—at the time this suit was started?

A. No, sir. I cannot give you any information as to the traffic arrangement between the two lines. I have nothing to do with the traffic matters. I only know that the schedules were made to connect for the purpose of handling through passenger business.

Q. What sort of connection did they make? How close was it at New Orleans?

A. A few minutes; perhaps half an hour, if I remember right.

Q. I will get you to refer to these sheets, please, and tell what connection train number 1 made, and what connection train No. 3 made (showing witness time tables)?

A. Train No. 1 reached New Orleans at 11:25 a. m. Train No. 3 reached New Orleans at 7:55 p. m. Do you want the connection with the Southern Pacific?

Q. Yes, sir; I want the connection with the Southern Pacific.

A. The connection with No. 1 left New Orleans at 11:55 a. m., and the connection with No. 3 at 9 o'clock p. m.

Q. What was No. 1 of the Southern Pacific?

A. It was their train No. 9.

Q. What?

A. It was their train No. 9, the Sunset limited.

Q. What was that train?

44 A. They had two schedules at that time, both leaving at the same time; one the Sunset limited, and the other was a through train that didn't make quite so fast time; it made more stops. Do you want the Louisville & Nashville?

Q. Yes, please.

A. Morning train No. 1 didn't make any connection with the

Louisville & Nashville according to this car—No. 1 didn't. Connection with No. 3 left New Orleans at 8:15 p. m.

Q. How much time did that give in New Orleans to get from one train to the other—I. C. train No. 3 and the Louisville & Nashville going out?

A. 7:55 until 8:15, that is the evening connection with No. 3. The morning train didn't make connection.

Q. Where does that Louisville & Nashville train go out of New Orleans?

A. It goes through Mobile, Montgomery, Birmingham, Nashville, Louisville. The principal connection out of there is through Montgomery and the eastern New York business and Florida business; Atlanta and southeastern points through Montgomery.

Q. I will get you to state, Mr. Dunn, what was the necessity of the company in regard to making these connections and do this business; in order to do this, what was the necessity in regard to running its trains on fast or slow schedules?

A. Well, the schedules were made as fast as we thought it was possible to run them and make the schedule time.

Q. Why were they made fast?

A. In order to accommodate the through passenger business and the mails.

Q. I will ask you to state whether that was necessary or not?

A. Well, yes; it is necessary in competition with other roads, and for the proper accommodation of the through traffic.

Q. And as a matter of fact, Mr. Dunn, how fast could these through trains run? What time do they make?

A. Their schedule isn't uniform, of course, but it ranged from 35 to 45 miles an hour, that is including stops.

Q. Would it, or would it not, be safe with the nature of the road and with the equipments of the road to make faster time?

A. The time of those trains at that time, approximately: The schedule of the Chicago and New York trains, with the exception of the Empire express, which is faster, the time between New York and Chicago is about 24 or 25 hours, and that is about the time of those trains, perhaps a little more, or not so much. It is 25 hours between Chicago and New Orleans, that is about the same distance between New York and Chicago by the Pennsylvania. That would indicate that that schedule is about as fast as it would be safe to schedule such trains, or any trains over our road. It was then not in good condition, or not to be considered in as good condition as the trunk lines east of Chicago.

Q. Trains No. 1 and 3 carried dining cars, did they not?

A. Yes, sir.

Q. What was the object of the company in putting those dining cars on?

A. To save time, and for the convenience of passengers; to save the stops for meals; that is the principal object, and for the accommodation of passengers.

Q. That dining car was an additional weight on the train?
A. Yes, sir.
Q. And expense?
A. Yes, sir.
Q. It required more labor in pulling it?
A. Yes, sir.
Q. Mr. Dunn, is it not a fact that the Illinois Central railroad, about the time this suit began, and since, has been engaged in double tracking its lines from Jackson down towards New Orleans?
A. Yes, sir.
Q. How far?
A. The track is completed now within 47 miles of New Orleans from Jackson. It has been in use for some time. The double track is completed from a point 11 miles out of New Orleans into the city.
Q. The double track is now in use down as far as Ponchatoula?
A. Yes, sir, a little south of there.
Q. Do you know how far Ponchatoula is from Jackson, approximately?
A. One hundred and thirty-eight miles, approximately.
Q. Now, I will get you to state whether this double tracking of the road had anything to do with the question of the necessity the road was under to make speed with its trains?
A. Yes, sir, that was the prime consideration.
Q. Explain that, please.
A. The traffic was so heavy, freight traffic, with the passenger trains we had, that it was impossible to make the schedule time on a single track road; the delays were very serious and expensive to the road and the public.
Q. It was the need of greater speed to these fast trains that led to the double tracking of the road?
A. That was the principal consideration.
46 Q. Now, Mr. Dunn, I will get you to state, if you please, the stoppages by train No. 3. For instance, between Memphis and New Orleans what were the regular stops and the schedule time at the time this suit was brought?
A. Do you want a list of the stops?
Q. Yes, sir, the regular stops?
A. No. 1 stopped at Sardis, that was a necessary water stop; stopped at Grenada, that was to get the main line connection from the north of Jackson, Tennessee; and Winona, a junction point with the Southern railroad; Durant, junction point with the Aberdeen branch.
Q. With the Aberdeen branch only?
A. Yes, sir, and the Tchula district. Next stop Canton, it was a division terminal and a necessary stop to change crews and terminals. At Jackson, Mississippi, we got connection from the Little J., Gulf & Ship Island, and the Yazoo branch; also the Alabama & Vicksburg, Crystal Springs was a stop for water. Hazlehurst—there is no special reason for that stop at Hazlehurst, except that it

is an important town, big business place, and also a county seat. We stop at Wesson because there is a large amount of business done there.

Q. Did you stop No. 1 at Wesson?

A. Yes, sir, and at Brookhaven for the same reason. McComb, because it was a district terminal where engineers are changed. At Hammond for water. Those are all the stops.

Q. Now, you speak of stopping at Sardis and Crystal Spring, and one or two other places for water. Explain what that means?

A. It means that the engine can only carry enough water to run about 50 miles.

Q. You have established water tanks at those places?

A. Yes, sir, we have established water stations.

Q. Now, Mr. Dunn, you speak of stopping at Hazlehurst and Brookhaven and Wesson. How do they compare as regards their business with Magnolia?

A. Oh, the business is very much greater. Hazlehurst is a town of about 2,700 or 2,800 people. Brookhaven is a town of 5,000 or 6,000, probably 6,000. And Wesson is a town of about, I would say, 3,000. I haven't the census figures, but it is somewhere in that neighborhood.

Q. Mr. Dunn, all three of those places lie north of McComb city, do they not?

A. Yes, sir.

Q. State whether or not there is a train, and was at the time this suit was begun, run on the Illinois Central railroad from
47 McComb city to New Orleans, and which stopped at Magnolia, known as the "McComb City accommodation?"

A. Yes, sir.

Q. That train started south of all three of those places?

A. Yes, sir. Left McComb 5:45 a. m., reaching New Orleans 9:35.

Q. What was the number of that train?

A. No. 31.

Q. I will get you to make the same explanation in regard to train No. 3, what its stopping places were?

A. South of Memphis it stop-ed at Sardis, necessary for water; at Grenada to get the main line connection by way of Jackson, Tennessee; Winona, a junction point with the Southern; at Durant, the junction with the Aberdeen branch and the Tchula district; Canton, a division terminal to change crews and engines; Jackson, Mississippi, to get the connection with the A. & V. and G. & S. I., Natchez branch, and Yazoo branch; at Crystal Springs for water; at Hazlehurst and Brookhaven and McComb city, that being a district terminal the engine was changed, and at Hammond for water.

Q. Neither of these trains stopped at Amite City, did they?

A. No, sir.

Q. That is the county seat of Tangipahoa parish, in Louisiana?

A. Yes, sir.

Q. Have you got some time tables showing these schedule and stops of these trains?

A. I have one as far as the Louisiana division is concerned—south of Canton.

Q. What schedule is that you have?

A. This is the schedule of the Louisiana division, taking effect April the 12th. (Showing.)

Q. Do you find the schedule there of the Mississippi division, from Memphis?

A. No, sir.

Q. I will get you to hand it to the stenographer and he will mark it "Exhibit No. 1" to your deposition.

(Time table of the Louisiana division of the I. C. R. R., taking effect April 12th, here introduced in evidence by complainant, and marked "Exhibit No. 1, to the deposition of Mr. O. M. Dunn.")

Q. That schedule shows the time and stopping places for all the trains running north as well as those running south, does it?

48 A. Yes, sir.

Q. That train No. 31, which you spoke of awhile ago, the McComb City accommodation, what sort of a train is that; how is it made up?

A. It consists of a baggage car and 2 or 3 coaches, or whatever coaches are required to handle the business, put on expressly to accommodate the local travel into and out of New Orleans. There is an opposing schedule in the opposite direction, returning in the afternoon.

Q. Mr. Dunn, could you give the court an idea of the comparative passenger business done between Magnolia and other points and along that region in your present division?

A. The ticket sales?

Q. Yes, sir, the ticket sales?

A. I have the figures from some of the stations I thought compared in volume of business with Magnolia. I didn't get any figures from Hazlehurst, I overlooked that.

Q. I will get you to make that statement to the court please.

A. The ticket sales from Magnolia for the five months ending with April this year, average $963.25 a month. Kentwood, which is a town of the same size, possibly a little larger, for the same period, the average ticket sales is $1,042.02 per month. At Summit, a town in the same county, possibly a little smaller—I don't know either—about the same size, the average for the same period was $706.50 per month. At Amite, the next county seat, south of there, the average for the same period was $828.64 per month. For Crystal Springs, which is a town about the same size, the average is $1,017.87 for the same period. For McComb city, the average was $3,932.98 a month for the same period. For Hammond, La., $2,561.83 for the same period; that is all that I have. I have a statement more in detail of the Magnolia business, if you would like to have that.

Q. Yes, sir, you might state that?

A. Here is a statement that I obtained from the auditor, showing the amount of passenger business done at Magnolia, Mississippi, for one year, April 1st, 1903, to March 31, 1903, giving the ticket sales for that year at Magnolia, the sales from Magnolia to New Orleans and from New Orleans to Magnolia.

Q. What were they?

A. The total ticket sales for Magnolia for that year was $11,840.63, that is approximately a thousand dollars a month. Sales from Magnolia to New Orleans was $4,053.36.

Q. For that year?

A. Yes, sir approximately $335 per month. Sales from
49 New Orleans to Magnolia, $2,832. Now, the sales from Magnolia to points north of Jackson for that year were $994.60, about $80.00 a month. The sales from points north of Jackson, Mississippi, to Magnolia, is $784.95, about $70.00 per month.

Q. Can you figure out from the data which you have, or give us the number of passengers from Magnolia to New Orleans? What is the ticket rate, Magnolia to New Orleans?

A. I couldn't figure very correctly on account of the excursion tickets, etc.

Q. What is the usual ticket rate?

A. $2.95, that is the regular passenger fare. It would be about 1350 passengers for the year.

Q. Thirteen hundred fifty a year?

A. Yes, sir; that is figuring on the south-bound sales. The north-bound sales are not so heavy. A portion of the sales are round trip tickets. This is the highest figure, 100 a month and 110 or 112 a month.

Q. Now, Mr. Dunn, I will get you to state, if you can, by way of showing the demand upon these interstate trains, what is the comparative earnings on passenger traffic per mile of these trains as compared with the local trains?

A. The earnings of No. 31 which is the McComb City and New Orleans accommodation, will average about 65 cents a mile. The earnings of train Nos. 1 and 3 will average from $1.00 a mile to $1.10 perhaps. I haven't the figures with me, but that is my recollection. There was a limited train whey they were put on 12 years ago didn't earn more than 50 or 60 cents a mile at first. The new venture was put on for the purpose of developing through passenger traffic. The difference in the earnings between then and now illustrates the success of that venture.

Q. Mr. Dunn, how many trains a day do the people out of Magnolia have into New Orleans that stop there—I mean passenger trains that they had when this suit began.

A. They had 3 if I remember right. They had 3 into New Orleans.

Q. How many out?

A. Four out; that is four north bound arriving from the south; three leaving for the south.

By Mr. GREEN:

Q. Give the numbers of the north bound?

A. The south bound were numbers 5, 23, and 31; the north bound were 24, No. 6, No. 2 and No. 32.

50 By Judge MAYES:

Q. Did No. 2 stop at Magnolia?

A. It did at that time; yes, sir.

Q. Mr. Dunn, I will get you to state whether, even without this Magnolia stop, it has been always practicable for the Illinois Central Railroad Company to make its connection at New Orleans with those fast trains?

A. No.

Q. I will get you to state to the court what, in your judgment as a railroad official and experienced in the management of its trains, would be the effect on the interstate traffic and on the carriage of the United States mails of requiring stops like this to be made along the line of the railroad?

Objected to by the defense unless the inquiry is confined to this particular spot at Magnolia under this order.

By the COURT: I think it should be confined to these particular stops at Magnolia, but the witness may answer the question.

A. When such trains are put on by the railroad company essentially to handle the through business and through passengers, they are given as few stops as possible, and the schedules are made as fast as the track conditions and traffic conditions will admit. Each additional stop makes it that much more difficult to get the train over the line on time. If a road were only operating one or two trains in each direction, of course, the schedules could be made much faster. In making the schedules all the local conditions have to be considered,—the time of the various stops, and the number of trains that have to be met, both freight and passenger, and there are many things to be considered in connection with it, which all affect the movement of the trains over the road. The slightest change in the work that a train is called upon to do often very materially affects the arriving time at destination. An extra stop, while it might not take more than 3 or 4 minutes, it might, in the movement of the train, affect meeting points in such a manner that it would make several minutes or half an hour in the arrival at the destination.

Q. I will get you to state whether this running of limited trains, these trains which do not stop at all stations, but make only such as these two trains we have been talking about, is a policy peculiar to the Illinois Central railroad and observed only by it?

51 A. No, sir. It is a policy that is adopted generally by the trunk lines—all the trunk lines, especially the best ones in the country.

Q. Now, Mr. Dunn, if there is any matter that you know in connection with this controversy that would be of benefit to either party that you haven't already been asked about, I would be glad if you would state it as fully as if I had asked you about it?

A. I don't think of anything now except the general policy, but I don't know whether I have a right to discuss it.

Q. Well, anything you want to state in that way, and the court will take it for what it is worth.

A. Well, on the line with what I have said, there is no railroad of any consequence but what has more or less severe competition, and the making of through schedules is governed largely by the schedules of its competitors, and generally the short lines make schedules as fast as they consider it advisable to run their trains. Necessarily upon the longer lines, if they want to compete with them, they have to shorten their schedules and increase their speed from mile to mile to compete with them. There is no railroad that has a short line to all points. These fast schedules have a connection with all principal points. Some of these may be on longer distances than competing lines; and the conditions that have to be considered in making up those schedules are very complicated and have to be very carefully considered, and the consequence of any additional stops that need to be made. It is true, as a general proposition, that through traffic of that nature cannot be handled with any local restrictions, especially if it is a through train put on for handling through business. In putting on those trains, they are not slighting the towns where they do not stop. The train of the character we are discussing are first-class equipment and first-class time, and in passing through the country benefits towns where it does not stop as well as those where it does. It cannot make all the stops, but carries the current of travel through that territory and people generally handle their freights and make their investments in the countries they are familiar with; therefore, the operations of the first class, through service is like the operation of a first class turn-pike in old times before the railroads had developed in the country.

Q. What competitive lines has the Illinois Central into New Orleans from northern and northeastern points?

A. Louisville & Nashville and the Queen & Crescent.

Q. Two.

A. Two, yes, sir; and in a short while they will have a third competitor from the north,—the Gould lines west of the river.

52 Q. The Louisville & Nashville and Queen & Crescent both have direct through connections both to Louisville and New York, do they not?

A. Yes, sir.

Cross-examination:

Q. As I understand, Mr. Dunn, you do not know who made the schedules of the numbers 1 and 3?

A. Yes.

Q. What persons?

A. The time at the terminals, that is the principal points, Chica Memphis, Louisville and New Orleans, is determined on by the s ond vice-president.

Q. Who is the second vice-president?

A. Mr. Harahan. And the details have always been worked o by the general superintendent of transportation.

Q. You have never occupied either of those offices?

A. No, sir.

Q. So far as your jurisdiction extends you are governed by the e cution of these schedules from the general officers?

A. Yes, sir.

Q. Now, No. 1 stops at Summit, does it not?

A. I believe it did at that time; yes, sir, it stopped there.

Q. And it stops at Amite City, does it not?

A. No, sir.

Q. Not in April, 1903?

A. No, sir; not according to this guide.

Q. Look it up, because I think you will find that it did. Lo at the time table?

A. That is designated as a flag stop.

Q. It stopped on flag at Amite?

A. At Summit, I am talking about.

Q. Well, it stopped on flag at Amite City?

A. It was a regular stop.

Q. Regular stop for No. 1 when this suit started?

A. Yes, sir.

Q. Now, No. 1 started from Chicago at what hour when this s was brought?

A. Ten o'clock a. m.

Q. It starts from Chicago now at about what hour?

A. 8:25 a. m.

Q. Do you know any reason why it could not have started at 8: instead of 10 as it is now, in April, 1903?

A. No, I do not know anything about that. I am not famili with the conditions there.

53 Q. Chicago is the northern terminal of the Illinois Centr is it not?

A. Yes, sir.

Q. Its trains are made up, and they start from there?

A. Yes, sir.

Q. No. 1, when it stops at the different places to which you ha alluded in the State of Mississippi, takes on local business, passe gers and baggage for the other local stations in Mississippi at whi it stops?

A. Yes, sir it takes all the business offered it where it stops.

Q. Is it not a fact if it stopped strictly for water at Crystal Sprin it could get through with its business quicker than if it loaded a unloaded baggage?

A. No, sir. It takes longer to get the water than to do the station work.

Q. The water recently has failed at Crystal Springs?

A. Yes, sir.

Q. You cannot get water there for either No. 1 or No. 3?

A. No, sir.

Q. Where do you get water?

A. At Jackson and at Brookhaven. It imposes extra stops at both places.

Q. Since this failure to get water at Crystal Springs have you continued to stop Nos. 1 and 3 at Crystal Springs?

A. Yes, sir; it being a regular stop it is shown on the card. We do that to enable the agent to sell tickets there. We couldn't change the time or wouldn't care to just for the few days we expect to be out of water at that place.

Q. If there is no difficulty by the insertion of this additional stop for water, is it not a fact you make the time into New Orleans for No. 1 and 3?

A. Yes, sir. Every minute's delay necessitates that much greater effort to make the schedule.

Q. You do make the schedule?

A. Yes, sir.

Q. And have continued to make it?

A. There was no schedule ever constructed that was made just as fast as a train could possibly run. In other words, the schedules are made for the trains to run as fast as practicable to make the time ordinarily. The train in running a thousand miles from Chicago to New Orleans meets with more or less delays here and there, and those delays have to be made up by increase of speed beyond the schedule time.

Q. As I understand it, since this suit was filed, No. 3 has
54 stopped and continues to stop regularly at Vaiden, Mississippi?

A. No, sir. I think that is a very recent arrangement.

Q. Is it not a fact that No. 3 does stop at Vaiden, Mississippi?

A. It might. I couldn't tell you without referring to the time table. I haven't the time table of that division.

Q. Here is a recent folder of the Illinois Central. Kindly look at that and see if No. 3 does not now stop at Vaiden (showing witness folder)?

A. It is a conditional stop, according to this. It makes a conditional stop at Grenada.

The complainant objects to the testimony about the Vaiden stop because the whole arrangement was made on the order of the railroad commission, and it ought to be introduced in evidence because the order is the best evidence.

It is agreed that the order of the Mississippi Railroad Commission

ordering No. 3 to stop at Vaiden will be filed as a part of the record and considered in evidence.

Q. The track from Jackson to Magnolia was doubled in April, 1903, was it not, and in use for passenger trains?

A. I am not sure as to that, but I think it was. I don't remember just when it was completed. It was completed in sections. I don't know whether it was completed south of Magnolia or not.

Q. There is no trouble on a double track in passing trains?

A. There is no trouble in meeting trains. You have to pass a fast train where it overtakes a slow train.

Q. There is no trouble in handling all of the passenger trains and freight trains south of Jackson since the double tracking has there been?

A. There is less trouble than there was before.

Q. Doesn't it chamber all of the commerce on this double track?

A. The business is less than it was last year at this time. It facilitates the handling of business greatly, but we are not prepared to say how much it will do that when we have an equal volume of business.

Q. Is it not a fact that since this order was made that the time of No. 1 between Jackson and New Orleans has been reduced?

A. It is slower. I think it is slower. Now it starts at 8:25. It is now 26 hours.

Q. It is lengthened?

55 A. Yes, sir; slower.

Q. Well, is there any difficulty with this lengthened time in stopping No. 1 at Magnolia?

A. There was a good reason for lengthening the time probably, or they wouldn't have done it. I don't know the reasons, I assume it was because of the double tracking between Fulton and Memphis; because of the very heavy business on the St. Louis division, etc., made it necessary to lengthen the time to prevent it getting into New Orleans late.

Q. When did No. 1 get to Jackson in April, 1903?

A. They got there at 6:20 a. m.

Q. And arrived at New Orleans at what time?

A. 11:25.

Q. How many hours run was that?

A. Five hours and five minutes.

Q. What time does it arrive at Jackson now?

A. Now it arrives at Jackson at 5:15 a. m. and reaches New Orleans 10:25 a. m.; that is five hours and ten minutes.

Q. What is the difference in the time?

A. A difference of 5 minutes.

Q. Now, No. 3 when this suit was filed arrived at Jackson at 2:42 p. m. did it not?

A. It left Jackson 2:57 p. m.

Q. Arriving at New Orleans at what time?

A. 7:55.

Q. It leaves Jackson now at what time?

A. Leaves there 3:30 p. m.

Q. And arrives at New Orleans?

A. 8:30; that is four hours and 58 minutes; two minutes difference.

Q. It arrives at Jackson now at what time?

A. It leaves at 3:30.

Q. When this bill was filed it left there at 2:57, nearly an hour later now than it did then?

A. Yes, sir. There is only 2 minutes difference in the running time.

Q. What change has been made in the schedule of the Southern Pacific in connection with No. 3 since this bill was filed?

A. I gave you the Southern Pacific from this book, but I haven't any current guide. That difference in the running time between Jackson and New Orleans might be brought about by the adjustment of the local figures because of the improper adjustment of the former figures. It doesn't mean anything in the general result.

56 Q. I want to know whether there was any change in your connection with that Sunset limited, the Southern Pacific, with No. 3 since this suit was filed?

A. That wasn't the Sunset limited. Last year we got there at 7:55; there was an hour and five minutes between the two trains at that time, and 30 minutes now.

Q. Is it 30 minutes now?

A. Yes, sir.

Q. Is it not a fact that the connection with the Southern Pacific is made really at Harahan, and don't the trains wait there one for the other?

A. The connections are made at the Union station in New Orleans. Some times they make the connection at Harahan in order to avoid delay at the station.

Q. When neither of the trains is late the connection is made at Harahan, 8 miles out of New Orleans?

A. Yes, sir; in order to save time on the movement of trains, of course.

Q. Is it not a fact Mr. Dunn, that there is really no connection between the Illinois Central and the Louisville & Nashville at New Orleans on No. 3.

A. Why no, it is not a fact. Passengers holding through tickets have time to make the transfer. They can do it in 10 to 12 minutes.

Q. Isn't it with the greatest sort of rush?

A. Well, no. It is about a mile, possibly a little more, between the stations, and a street car will make it in about 7 or 8 minutes.

Q. Is it not a fact that passengers with baggage never go over to that train but have to go on another train?

A. Well, it probably some times occurs.

Q. Isn't it the rule that they don't get there?

A. No, sir; it never came under my personal observation. They can make it by a 'bus in 15 minutes.

Q. The Illinois Central at New Orleans does not pretend to run in connection with the Louisville & Nashville like it does the Southern Pacific?

A. No, sir.

Q. The Louisville & Nashville will not wait a minute on it, will they?

A. Yes, they will wait when advised of the number of passengers.

Q. On special request?

A. Well, no; we never make the request of them to wait. We give them notice, and they will wait if there is a sufficient number of passengers.

57 Q. The Southern Pacific will wait for the through sleepers?

A. We only run one.

Q. Do they wait for that?

A. They do, the same as waiting for passengers.

Q. You have no through sleeper for the Louisville & Nashville?

A. No, sir. They have through mail cars between Southern Pacific and the Louisville & Nashville.

Q. Is it not a fact, speaking of those through trains with dining cars, that the president of the New York Central & Hudson River railroad said that the passenger who took his meals in the dining car didn't pay 25 cents on the dollar of his transportation, and the one who took his transportation in the sleeping car, didn't pay 50 cents on his transportation, and that the passenger traffic which paid was the fellow who sit in a seat and went 10 miles?

Objected to by the defense.

By the COURT: Let him answer it.

A. I have never seen the statement you refer to, but individually the president of the Hudson River railroad was passing upon matters from his experience on that particular line. Passenger traffic on the New York Central railroad is essentially local business. It runs through a densely populated country and a great number of large towns. They run a large number of through trains which are crowded, standing room only; they get the full local fare from them. Of course they run a large number of through trains at high speed between New York and Chicago. They run through towns of twenty-five and thirty thousand inhabitants without ever stopping. The through business with them is one business and the local business is another. Possibly the local business is more profitable. He never made the statement from knowledge of matters in Mississippi.

Q. Is it not a fact that through passengers travel at a lower rate than local?

A. Generally, yes, sir; not always.

Q. As a rule, isn't it true?

A. I cannot say as a rule. My recollection is that the fare between New Orleans and Memphis is substantially a local rate.

Q. Well, now what is it from New Orleans to Chicago?

58 A. I believe the first class fare is about $25.00. That would be about two and a half cents per mile. The local rate is based on 3 cents per mile.

Q. They sell commutation books for two cents per mile, do they not?

A. They are used mostly by short distance travelers—local travelers, traveling from station to station.

Q. Have you the statistics of Magnolia ticket sales for the months ending April, 1903?

A. Yes, sir.

Q. What are they?

A. They were a little less than the sales for this year. We missed one month in 1902, it was December. We couldn't find the reports, but we will consider it the same as the preceding year. The average for the four months, January to April, inclusive, was $816.44. They are always good in December. The sales this year were $1260.05. Probably it was not as much last year, because this is one of the most prosperous seasons I have known up to the first of January.

Q. You gave us the sales at Kentwood. Is it not a fact there is a branch road of the Banner Lumber Co. runs out there about 30 miles into the country?

A. Yes, sir.

Q. It does a passenger business, doesn't it?

A. Well, yes sir. I don't know just how much. Mr. Lambkin can tell you that. They probably bring in some passengers for New Orleans. I imagine not many. I imagine the passenger business is merely for trade at Kentwood.

Q. For Crystal Springs you gave the passenger ticket sales as $1017.00 during the 5 months in April, 1904. Crystal Springs had both No. 1 and 3 stop there at that time?

A. All trains stopped there, yes sir.

Q. You gave Magnolia for the same period $963.00?

A. Yes, sir.

Q. Numbers 1 and 3 did not stop there?

A. No, sir. I don't consider that would make $50.00 a month difference in the ticket sales; that is a matter of opinion, though.

Q. Is it not a fact, Mr. Dunn, that when this matter was up before the Mississippi Railroad Commission you expressed surprise that No. 1 didn't stop at Magnolia.

A. I don't know about that. I wasn't surprised myself. If anything was construed that way it was evidently a mistake. I might have had it in my head it was a stop for that train, and expressed surprise when I found I was mistaken.

59 Q. Up until April, 1903, No. 1 had been uniformly stopping at Magnolia, had it not?

A. I couldn't tell you without reference to the record. I haven't them here. I assume that was probably correct. But there were some conditions that made it proper to do that. There was an additional schedule put on—No. 5, about that time, and it may be that relieved us of the necessity of stopping No. 1 there. I am not sure but that was probably the reason.

Q. Do you know the reason?

A. I do not.

Q. In point of fact, when this order was made there were four trains north of Magnolia, and by taking No. 1 out you left only 3 trains at Magnolia. Can you explain why you left 3 one way and 4 the other?

A. No, sir; I cannot, except as I said, it was probably the adjustment of the schedule, giving them practically the same accommodation as they had with 4. That run was close together. It would be of no material accommodation to the people, when No. 3 would give essentially the same service.

Q. What kind of a train is No. 2 north?

A. Fast mail, north bound.

Q. Did it stop there in April, 1903?

A. I believe it did; yes, sir.

Q. Does it continue to stop there?

A. I cannot tell without reference to the schedule. I am sure it does not.

Q. When did you stop that?

A. When did we stop stopping?

Q. Yes, sir?

A. It stops now for passengers. It stops at Magnolia. It takes passengers for points north of Grenada.

Q. It has plenty of time to make the stop, hasn't it?

A. Well, I will not say that. There is a train passing Magnolia at 9:08 p. m. that handles all the passengers to points that No. 2 does, and some additional points as far north as Grenada to Jackson, Tenn. Passengers wanting to go to points north of Grenada and Memphis, and up that way have to take No. 2 or they would not get the accommodation. The stopping the train for these passengers, it is a conditional stop. We didn't have time to stop there then.

Q. What conditional stops are there for No. 1 in the State of Mississippi?

A. I could not tell you without the time-tables. I can give it to you on the Louisiana division. No 1 stops at Amite for passengers for points north of McComb, I don't recall now the reasons

60 why that special stop was made of that train in there, that conditional stop, without stopping at Magnolia.

Q. What conditional stops does No. 3 make in Mississippi?

A. I can only say as to my division. No. 3 stops on Saturday, on

signal, at Summit for passengers to New Orleans, and at Wesson for passengers from Jackson or north of Jackson.

Q. They have plenty of time to stop on Saturday at Summit.

A. We have the time to make the stop. They are provided for to accommodate the business as best we can. They are always made under protest.

Q. No. 3 stops Saturday regularly at Summit?

A. On signals.

Q. It will stop at Wesson for passengers north of Jackson?

A. Yes, sir; from Jackson or points north of there.

Q. When this order was made you say there was train No. 23 that gave service for McComb. What has become of train No. 23?

A. It was substituted by a train of different number.

Q. Twenty-three has been abolished north of Jackson?

A. No, sir. The number has been abolished and another number substituted on different time.

Q. Thirty-three is substituted?

A. Yes, sir.

Q. In April, 1903, 23 came into Jackson from the north a through local train and arriving at Jackson about 3:45 and came south, stopping at Magnolia, and arrived at New Orleans somewhere about 10 or 11 o'clock?

A. Ten-twenty.

Q. Twenty-three has been taken off, and a train called 33 run south of Jackson, Mississippi, as local, arriving there at 10 o'clock in the morning and stays in Jackson until about 4 o'clock in the afternoon?

A. Yes, sir.

Q. And goes south from Jackson to New Orleans, arrives there about 10:20, stopping at Magnolia?

A. Yes, sir. It is substantially the same train as No. 23.

Q. A passenger who wants to stop at Magnolia, for instance, from Canton, would have to come down on local 23 to Jackson, arriving there at 10 o'clock, remaining there all day until 4 o'clock and go south at 4 o'clock in the afternoon under the present schedule?

A. No, he would come from Canton on No. 3.

Q. It doesn't stop at Magnolia?

A. No, sir; but it stops at Jackson. He would be laid out at Jackson half an hour.

61 Q. A passenger taking it at Pickens who wanted to go to Magnolia would have to go to Jackson on No. 33, lay there from 10 o'clock until 4 in the afternoon, then go south at 4 o'clock in the afternoon in order to get from Pickens, where No. 3 don't stop, in order to get from Pickens to Magnolia?

A. Yes, sir; but I do not imagine there is a passenger for that trip once in three months.

Q. Is it not a fact that there is only one train a day that stops at Magnolia that takes passengers at all the local stations north of Jackson going south now?

A. There is but one local schedule.

Q. Taking the territory from Jackson to Grenada, the local territory, is it not a fact that there is but one train a day going south with passengers from way stations between Jackson and Grenada to Magnolia?

A. No, sir; there is one through train, continuous schedule, No. 5.

Q. What is the other one?

A. It is a through train with that lay over at Jackson, of course. But in considering that schedule, we considered the light traffic between Magnolia and points south of Jackson and north of Canton. By arranging the schedule into Jackson in the morning and letting it lay there to leave Jackson in the afternoon, it not only accommodates the people north of Jackson, but would accommodate the people of Magnolia that desire to go to Jackson and return?

Q. That is entirely for the accommodation for the people south of Jackson and no accommodation for the people north of Jackson into Magnolia?

A. As I said. I venture to say there would not be three passengers a year into Magnolia from points north of Jackson.

Q. Do you know that to be a fact?

A. No, sir; but I know from my knowledge of the business generally that the traffic is very light, and I know from the reports I have gotten since that schedule has been made.

Q. Have you these figures?

A. No, sir.

Q. I will ask you to prepare from the records of the railroad company, if you can, the statistics of tickets from north of Jackson to Magnolia since this train 33 has gone into effect, for 5 months before April, to that time?

A. I will be very glad to do that. These commutation tickets are used, and I cannot give you that. I doubt if I could do that. The mileage are coupons.

62 Q. Don't the conductors make a memorandum of them?

A. They do, but I doubt if I can get them up.

Q. Is it not a fact that this train No. 5 passes through this territory from Memphis to Jackson at night?

A. It don't come from Memphis.

Q. Comes from Jackson, Tennessee?

A. Yes, sir.

Q. It passes through that portion of Mississippi at night?

A. Yes, sir; in the morning.

Q. Arriving at Jackson just after daylight?

A. It leaves Magnolia after daylight. It passes Jackson at 2:24 a. m.

Q. It arrives at Magnolia just about daylight?

A. It is after 5 o'clock No. 5 reaches Magnolia.

Q. I want to know the time it runs through the State of Mississippi?

A. It reaches Magnolia at 5:37 a. m.

Q. What time does it start into Mississippi?

A. It leaves Canton at 1:55 a. m. I haven't the figures north of Canton.

Q. It enters the State about 8 o'clock at night.

A. Yes, sir.

Q. It is a night train and gets to Magnolia at daylight in the morning?

A. Yes, sir.

Q. Is it not a fact that this train No. 31, called the McComb City accommodation, is a local train and stops at all of the way stations?

A. Yes, sir.

Q. And is it not a fact that that train coming and going is full of Dagoes and laboring people?

A. Well, I wish it was.

Q. I mean, isn't that the character of travel?

A. No, sir; it is local people that live in the towns.

Q. Is it not a fact that the best people of Magnolia do not *rise* (ride) in that train at all, and the best people along the line don't ride in that train at all?

A. No, that is not a fact.

Q. Doesn't it stop at every cross-roads?

A. No, it don't do that. It stops at every point where the business justifies it. It is an accommodation essentially. It makes a run of 105 miles in 4 hours, I think—about 20 or 25 miles an hour. That is not an extremely slow train.

Q. Is it not a fact that passengers from Magnolia who desire to take the Southern Pacific road could not take 31 and make connection with the Southern Pacific at all?

63 A. Yes, sir; but he can take No. 5. No. 31 isn't run in connection with any other road.

Q. Numbers 1 and 3 are run in connection with the Southern Pacific?

A. Yes, sir; for the Chicago connection.

Q. No. 5 is not?

A. No. 5 is just as good a train as No. 1 in equipment practically. It carries first-class sleeper and good coaches. There is no lack of accommodation as far as handling passengers is concerned from Magnolia to New Orleans, either for connection or local business.

Q. How about the connection in the evening—33?

A. That does not make any connection.

Q. Is it not a fact that No. 33 is nearly always late in getting into New Orleans?

A. No, sir.

Q. Or was it at that time?

A. At that time the traffic was so extremely heavy our road, like any other road of consequence in the country, was overtaxed in the handling of business, and that train, like our through trains, was more or less delayed. The best service we could give could not have prevented it.

Q. You thought it was proper and safe to shorten the time for the Southern Pacific connection from an hour and five minutes to one hour and 30 minutes?

A. I don't think we did that.

Q. Isn't that what you stated?

A. No, sir, I didn't state that.

Q. I mean at New Orleans?

A. We left Chicago at a different hour. The running time between Chicago and New Orleans isn't of any substantial difference.

Q. Under the old regime you had an hour and five minutes margin in New Orleans between the arrival of your train and the departure of the Southern Pacific. You have reduced that margin to 30 minutes?

A. That is because the schedule was faster than we wanted to make it, but we were forced to make it to get the connection. That change reduced the time, which gave us an opportunity to get the time we actually needed.

Q. The margin you have now in New Orleans is only 3 minutes. Is that a safe margin?

A. I wouldn't say it would be if the schedule was shorter than it is.

Q. Is it not a fact, Mr. Dunn, that formerly the 30 trip tickets were good to Magnolia and McComb city, but that now they
64 refuse to issue 30 trip tickets to Magnolia, but issue to McComb city, thereby making a difference in the passenger receipts of the two places?

A. I cannot answer that. I have nothing to do with the selling of tickets or the regulation of tickets. If that was done, I don't know why it was done. I don't think that would make much difference in the amount.

Q. When was the night agent taken off at Magnolia?

A. I cannot give you the date; some time in April, I think—that is, the night operator was taken off.

Q. April, 1904?

A. Yes, sir.

Q. Wasn't it before that?

A. Well, I may be mistaken; I don't remember. It was recently anyway.

Q. When the night operator was taken off at Magnolia there was nobody to sell tickets for No. 5, was there?

A. Well, as to that, the night operator was taken off in the reduction of expenses that was made necessary by the very serious falling off in the earnings. We were trenching to save, from the largest to the smallest, to meet changed business conditions. When that night operator was taken off, I approved of it as superintendent, and it was handled by my chief clerk, and no special instructions were given to the agent to see that tickets were sold for those trains. Before it came to my attention some time had elapsed. Unfortunately

during that time there were no tickets sold for No. 5. As soon as it came to my attention, I corrected it.

Q. Is it not a fact that the station agent at Magnolia was only a day man, whose hours run from 7 o'clock in the morning until 7 in the evening?

A. No, sir.

Q. What hours did he go on duty?

A. At 7 o'clock a. m. to 7 p. m., and there is a special arrangement in the contract by which he is paid overtime for overtime duty.

Q. Under his contract he is required to go on duty at 7 o'clock?

A. If that is the hour designated by the chief dispatcher.

Q. Train No. 5 passes before 7 o'clock?

A. Yes, sir.

Q. Is it not a fact that there was nobody in the office of Magnolia to sell tickets or check baggage or perform any other passenger service for No. 5?

A. I said that was purely an oversight in my office, and if the matter had been properly looked after by the chief dispatcher
65 or my chief clerk that would not have occurred for 24 hours, but it did occur some time before it was brought to my attention.

Q. How long did it continue?

A. Two or three weeks, perhaps.

Q. Didn't it continue until you employed another night operator?

A. No, sir. There is not anything in that. We acknowledge the oversight in handling the business. There was no intention to fail to provide them with the necessary facilities to handle their business.

Q. Wa-n't it after the May term of court in Jackson when it was discovered?

A. That had nothing to do with it. It didn't occur to me. It was never considered in connection with it; in fact, I didn't think of it in connection with the matter. It was a duty we owed to the people of Magnolia to give them the facilities, which we failed to do in that instance.

Q. I am talking about the night operator. You knew there was no station agent there at night?

A. No, I didn't know that. I explained that to you. When the night operator was taken off, the day employés were to have been called upon to attend to those trains. Ordinarily it ought to have been done along without any instructions.

Q. Is it not a fact that the matter was brought to the attention of the railroad company by the inspector of the United States mail, who demanded of the company that the mail should not lie in the depot all night, but it should be carried to the postoffice by the employés of the company as required, and that if it wasn't done he would report the company for failure to attend to their duty?

A. Probably so. Whenever there is a failure to handle mails

properly, the inspector calls my attention to it. There is no threats or anything of that kind. It is just simply routine matter. No doubt he did call attention to it if it did occur, but the agent at Magnolia should have seen to that.

Q. Is it not a fact that the rectification of this night operator came about by the demand of the United States mails?

A. No, that is not a fact. It wouldn't have made any difference either way.

Q. The question came up between you and the inspector, Mr. Fitzgerald?

A. It came up as routine matter. Mr. Fitzgerald, whenever there is a failure to deliver mail, he writes my office.

Q. Is it not a fact that after Mr. Fitzgerald brought this to your attention, that this night operator was put back?

66 A. I presume it is a fact as to time, but I don't think Mr. Fitzgerald's advice had anything to do with it; because we would have provided a night operator or a night clerk whether Mr. Fitzgerald had called our attention to it or not. As I said, as soon as my attention was called to it I made arrangements to rectify it at once.

Redirect examination:

Q. This Vaiden stop Mr. Green was asking about. Vaiden isn't in your territory?

A. No, sir.

Q. You had nothing to do with the Vaiden stop?

A. No, sir.

H. McCOURT, being duly sworn as a witness on behalf of the complainant, testifies as follows:

Q. Are you an employé of the Illinois Central railroad?

A. Yes, sir.

Q. In what capacity?

A. Assistant general superintendent.

Q. Located where?

A. Memphis.

Q. How far does your jurisdiction extend?

A. From Louisville to New Orleans.

Q. Mr. McCourt, do you know anything about this Vaiden stop that Mr. Green spoke of in his examination of Mr. Dunn?

A. Yes, sir.

Q. I will get you to explain why that stop is provided for at Vaiden? What brought it about—train No. 3?

A. Train No. 3 has been stopping at Canton for some time to allow passengers to alight from points north of Canton. Recently the railroad commission made an order that we stop No. 3 for passengers destined to Jackson, Mississippi, and points beyond at which train No. 3 stops.

Q. How did it come about that the stop was made necessary in the first place?

A. The commission ordered the stop.

Q. The stop Mr. Green was talking about?

A. I don't know why it was necessary. The commission made the order that we stop No. 3 at that point to take up passengers for Jackson, Mississippi, and points beyond.

Q. What time does that train pass Vaiden?

A. At 1 o'clock.

67 Q. What time does 33 pass Vaiden now under the change of schedule?

A. At 7 o'clock in the morning.

Q. What time did it use to pass Vaiden?

A. At 3:30, I think. It followed No. 3.

Q. Before that order was made they had a local train that stopped there at 1:30?

A. Yes, sir.

Q. And the limited that came by about 1, that stopped?

A. Yes, sir.

Q. And the 1:30 local was changed to the 7:30 local?

A. Yes, sir.

Q. And then the railroad commission made the order that No. 3 should stop there?

A. Yes, sir.

Q. It wasn't required to stop there for any traffic north of Jackson?

A. No.

Q. I will get you to explain to the court the nature of these trains 1 and 3 and the necessity for having trains running on schedules like that in order to accommodate the traffic that has to be served by your road?

A. Well, trains 1 and 3 are through trains from Chicago to New Orleans. They are known as fast trains. They are put on to handle the through business—passengers from Chicago to New Orleans or through long-haul points, and to handle passengers from connecting lines at Chicago to through junction points; through mail, etc., and, of course, the character of the business demands fast trains. In order to make it a fast train we stop only at junction points, or important places where there is liable to be considerable travel.

Q. I will get you to state what would be the effect on traffic, the interstate through traffic, and on the transmission of the United States mails, if the company were to convert those trains into trains which stop at all these places along the line of the road of the size of Magnolia?

Objected to by the defendant as incompetent.

By the COURT: I will allow him to answer.

A. Of course, if we stopped our through trains at all stations between Jackson and New Orleans the size of Magnolia we would

make a local train of it. We would not only lose passeng
68 business, but we would lose the mail contracts, and hurt t
towns and country, too. If there were no through servi
people would go to the other lines, and to our competitors, and ave
the road.

Q. I believe you are not in special charge of this end about M
nolia?

A. No, sir; Mr. Dunn is in direct charge of that division.

Q. Is there anything I haven't asked you about that would be
benefit to either party in this case that occurs to you?

A. No, sir; I think you have covered the ground as far as I kn
with Mr. Dunn.

Cross-examination:

Q. The company obeyed the order of the railroad commission
cently and stopped at Vaiden?

A. Yes, sir.

Q. That order was made since the order to stop at Magnolia?

A. Yes, sir. That order came about this way: With the chan
of schedule, we were stopping at Vaiden to allow passengers to alig
at that point that boarded No. 3 or 23 to stations north of Grena
The commission took the matter up and requested us to stop No
at Vaiden for passengers going from that station to Jackson, Mis
sippi. They didn't at first make the order; they requested us to
it. We agreed to look into the matter, which we did, and fou
that No. 3 was stopping nearly every day at Vaiden to allow
through passengers from the north to alight, and we agreed w
Commissioner Kincannon to comply with the request of the co
mission. Of course, if we stopped to take up the Jackson passeng
we just as well might take passengers for Hammond or New
leans, and for points on the Yazoo & Mississippi Valley railroad
Jackson, and we agreed to stop the train and the commission af
wards made the order.

Q. If you stopped at Hammond and these other places south
Jackson to let off passengers from Vaiden, why wouldn't you s
at Magnolia?

A. We didn't agree to stop No. 3 at Vaiden for passengers for a
point where No. 3 didn't then stop. We only agreed to take pass
gers for Jackson, New Orleans and other stations where No. 3 ma
regular stops.

Q. You put in a regular stop for No. 3?

A. No, sir; we did not. We sometimes agreed to allow No. 3
stop at Vaiden and pick up passengers for Jackson or points
which the train already stopped. If the agent had a call
69 a ticket to Jackson, Mississippi, or New Orleans, he wo
flag No. 3. If he had no call No. 3 wouldn't stop.

Q. At that time No. 3 was stopping for all passengers who desi
to debark at Vaiden?

A. No, sir. They were only stopping for passengers from points north of Grenada.
Q. You had time to make that stop at Vaiden?
A. We did make it. We didn't have time to make it.
Q. You did make it?
A. Yes, sir.
Q. You made it voluntarily?
A. Yes, sir.
Q. What size town is Vaiden?
A. I don't remember the population of Vaiden.
Q. It is a very small place, isn't it?
A. No, sir; it is a very good business town.
Q. Is it as large a place as Magnolia?
A. I cannot answer that, because I don't know the number of people in Vaiden.
Q. Are you a ranking officer of Mr. Dunn?
A. Yes, sir.

Redirect examination:

Q. How many southbound trains stop at Vaiden?
A. Well, No. 5, 33, and I think 1.
Q. No. 1 stops, too?
A. I think so; I am not positive about that.
Q. Vaiden now has no more southbound trains that stop there than Magnolia?
A. No, sir.

The complainant rests.

70 Mr. W. B. GROCE, being duly sworn as a witness on behalf of the defendant, testifies as follows:

Q. State your name, age, residence and occupation?
A. Name W. B. Groce, 30 years old, agent I. C. railroad at Magnolia, Mississippi.
Q. How long have you been the station agent of the Illinois Central at Magnolia?
A. Two months and three days.
Q. State how long after you were installed as station agent at Magnolia it was that the night operator or night agent was abolished?
A. Before I took charge.
Q. Do you know how long before you took charge?
A. It was abolished the 28th of March.
Q. Of this year?
A. Yes, sir.
Q. What hours did you have as station agent at Magnolia?
A. There has been no regular hours assigned to me, but I suppose from 7 until 7. I never saw any agreement or written contract, but

from 7 in the morning until 7 in the evening I suppose to be a day's work.

Q. State whether or not there was anybody at the station (at) Magnolia during your encumbency, up until a few days ago, to sell tickets for No. 5?

A. Up until two weeks ago, no, sir.

Q. What facilities were there for checking baggage and selling tickets for No. 5?

A. Not any.

Q. What facilities are there now for checking baggage and putting it on board No. 5?

A. They have a night operator there.

Q. Does he put the baggage on the train?

A. He is supposed to; yes, sir; it is a lady.

Q. Is she supposed to put the baggage on the train?

A. Yes, sir; that is required of her. She is supposed to do it or have it done.

Q. Is there anybody in the employ of the company to put baggage on the train except this lady operator?

A. No, sir.

Q. State whether or not there are sold at the station Magnolia what might be called through tickets; that is, tickets from Magnolia to New York, or Magnolia to Chicago, or through points?

A. We have none in stock.

71 Q. Where do the passengers from Magnolia who desire to go to New York, for instance, have to go to get their tickets?

A. They can get them there by applying to the agent and he can order them from the general passenger agent on a two days' notice.

Q. As a rule where do the passengers who buy these foreign tickets buy them?

A. I couldn't say that.

Q. State whether or not you have any mileage tickets for sale at Magnolia?

A. No, sir.

Q. They have to be bought elsewhere?

A. Yes, sir, or give us notice to order them.

Q. State whether or not No. 3 stops at Magnolia to put off various passengers who hold foreign tickets?

A. Not that I know of.

Q. They have not done so during your encumbency in office?

A. No, sir.

Q. Answer the same question as to No. 1?

A. No, sir.

Cross-examination:

Q. You say this night operator, before you began to be station agent, was taken off about the 28th of March?

A. Yes, sir.

Q. When was the night operator restored?
A. The 17th of May.
Q. As a matter of fact, how is the baggage for that place handled?
A. The night operator handles it.
Q. She doesn't pick up the trunk in her own hands?
A. I think she hires a man to do that for her and pays it out of her own salary.
Q. It is her duty to have it put on the cars?
A. Yes, sir; she agrees to that when she accepts the position.
Q. The night operator at that place, I mean?
A. Yes, sir.
Q. As a matter of fact, it is done?
A. Yes, sir.
Q. If she cannot do it, she has to hire some one to do it?
A. Yes, sir.
Q. Does the train crew help her to handle the baggage?
A. They are supposed to, yes, sir.
72 Q. The night operator there is a woman, but she is expected to see that the baggage is put on the train, and it is handled that way?
A. Yes, sir.
Q. How long has that lady been night operator there?
A. Since May 17th.
Q. The 17th of last month?
A. Yes, sir.
Q. You say—when were you employed by the company there—what date was that?
A. April the first, that is when I was appointed agent at Magnolia.
Q. You never received any instructions from the company that you were not expected to be there at that morning train?
A. No, sir.
Q. That was just your inference, it was from 7 o'clock to 7 o'clock, a day's work?
A. Yes, sir.
Q. If you had gone there and attended to it you would have been paid for overtime work?
A. I would have expected it, yes, sir, and I would have gotten it.
Q. Mr. Green asked you about the ways and means for getting through tickets for people going north. As a matter of fact, the people who want to go to New York can take the local from Magnolia?
A. Yes, sir.
Q. And go to Jackson and buy their tickets there?
A. Yes, sir.
Q. And take the limited there?
A. Yes, sir.
Q. Isn't that true of other little towns along the line of that railroad?

A. Yes, sir; they can take a local ticket and go on to a coupon office and buy tickets.

Q. There is a coupon office at Jackson?

A. Yes, sir.

Q. And it just involves a stop over from local to the limited at Jackson?

A. Yes, sir.

73 SAM COMBS, being duly sworn as a witness on behalf of the defendant, testifies as follows:

Q. State your name, age, residence and occupation?

A. Sam Combs, 39 years old, merchant at Magnolia.

Q. How long have you been a merchant at Magnolia, Mississippi?

A. Since 1889.

Q. State your own knowledge as to what stations on the Illinois Central Railroad train No. 1 stopped on April 21st, 1903, and May 6th, 1903, in Mississippi?

A. McComb city, Summit, Brookhaven, Wesson, Hazlehurst, Crystal Springs, Jackson. That is all as far as I can tell you.

Q. What stations in Louisiana did No. 1 stop at this date?

A. It stopped at Hammond and Amite.

Q. What stations in Mississippi did train No. 3 stop at on said dates?

A. At Canton, Jackson, Crystal Springs, Hazlehurst, Wesson, Brookhaven, and McComb city.

Q. During the term of circuit court in Magnolia, state whether or not No. 1 stopped?

A. I have seen it stop quite often during court.

Q. How long within your knowledge has No. 1 been stopping regularly at Magnolia?

A. I have been living on the line of the Illinois Central beginning with Osyka in 1874, and I have always known No. 1 as one of the original trains, and it has always stopped up to the no stoppage order these last 12 or 18 months.

Q. The no stoppage order was about 4 months before the order of the commission?

A. Yes, sir; something like that. No. 1 was always considered our train. We have always known No. 1 as our first-class train.

Q. What facilities has a citizen of Magnolia for taking the transcontinental routes, Southern Pacific and Texas Pacific, out of New Orleans?

A. We have one train that we can go by, that is No. 5 in the morning, to be pretty sure to make our connections. That is the train that passes home 5:37 in the morning.

Q. Are they the trains that the railroad company runs for this through business?

A. Well, we do not consider them so, because we don't know

whether No. 5 is on time or not. We might not be able to make it. We might be laid out 24 hours.

Q. How would it be with No. 1 or No. 3?

74 A. No. 1, that is considered more of a first-class train.

Q. Those are regular connections with the Southern Pacific connections?

A. Those are what are termed regular connections, yes, sir.

Q. Now, touching No. 1, state to the court what transpired at the meeting before the railroad commission in respect to any statement that Mr. Dunn, the superintendent of the Illinois Central made, in regard to No. 1 stopping at Magnolia?

A. When we brought that matter up before the railroad commission, Mr. Dunn seemed to express more or less surprise. Of course he knew No. 1 hadn't been stopping for some time. He said when he discovered that number went as a through train, leaving Magnolia as a way station, or in other words no stoppage order there, he was surprised, and had taken the matter up with the higher officials, and thought that there would be something done in a very few days relative to that. The railroad commission expressed surprise that they hadn't been notified that No. 1 had been taken away from us.

Q. What is the condition of the track of the Illinois Central between New Orleans and McComb city as regards grades and curvatures, and as regards its capacity to make high rates of speed?

A. I believe the best records have been made over that end of the line.

Q. Is it straight track?

A. I suppose they have as good stretches of straight train as you will find in the number of miles.

Q. It is through prairie country?

A. It is inclined to be low.

Q. It is a level country?

A. Comparatively so, yes, sir.

Q. Now, as to the character of service of No. 31, state to the court what kind of a train No. 31 is?

A. Well, it would be very hard at this up-to-date railroading to class a train like No. 31. I don't believe we have any worse trains than 31 is to-day. It is out of date—antiquated.

Q. What character of travel does it have?

A. It catches the laboring class, mill hands and truckers.

Q. How about its stop going south for mail?

A. I don't know about its mail arrangement. I think it takes on mail at Hammond and Independence. I don't use.

Q. Why don't you use it?

A. It is a very slow train in the first place, and in the second place the accommodations are very poor.

75 Q. State if anything you know in respect to the people of Magnolia using this train, and if they don't use it, why not?

A The only people that use that train are the people that have to use it; it is a case of compulsion, that is all. They would not use

it if they had any way to get out of it. People that want to go to Osyka can't help it because there is no other train that stops at Osyka and Tangipahoa and Kentwood. We are compelled to use it when we want to go to local points, because there is no other train. It is forced upon us.

Q. Now, as a matter of explanation state about the relative population of places. I will ask you whether, at the—you examined the census of 1900 as to Vaiden, Magnolia, Summit, Hazlehurst, Crystal Springs, and if so, what does this census show the population of those places in 1900?

A. Yes, sir; I examined the records. It says, "Vaiden 474; Magnolia 1038; Summit 1499; Hazlehurst 1579; Crystal Springs 1093;" it shows our county, Pike, as having 27,545 people, one of the largest in the State.

Q. Now, as to the location of Magnolia, with respect to the balance of the county and transaction of business, what have you to say?

A. Well, Magnolia as a trading town, has been considered the leading trading town of the county.

Q. As to volume of its business and the extent of its trading country?

A. Yes, sir, from Marion county and Amite county. There is an old saying down there with us that all roads lead to Magnolia.

Q. That is the principal trading point of the county?

A. It is really the principal trading point of the county.

Q. Since 1900 what improvements, commercial or otherwise, have been made at Magnolia?

A. Well, we have built an electric light plant, ice plant, about $75,000 oil mill, and a cotton mill, and expect to double it within these next 5 months. I don't know how many residences have been built, but our population since this census must have increased 300 or 400 people; that would be a conservative estimate.

Q. That is the county seat of Pike county, is it not?

A. Yes, sir.

Q. That touches the State of Louisiana—the last county on the southern boundary of the State?

A. Yes, sir.

Q. You travel a good deal on the Illinois Central, do you?

A. Yes, sir.

76 Q. Where *to* (do) the people of Magnolia buy their through tickets, for instance to New York?

A. We buy a good many during the year. We either get them at McComb city or at Brookhaven, mostly at McComb city.

Q. Now, as to the mileage books. Where do the people of Magnolia as a rule buy them?

A. I buy mine mostly at McComb city, some few at Brookhaven and one at Jackson, because they were the most convenient when mine expired.

Q. Now, comparison has been made between the tickets sold at Magnolia and McComb and other places. State if you know why

it is that Magnolia's receipts from ticket sales don't show larger than they do?

A. In the first place, the through travel from Magnolia is quite an item. Our merchants and people generally travel a good deal and they make long rides and they have to go outside of Magnolia to buy their through tickets. They have to go to coupon offices; McComb city being nearest, they buy there a good deal. We are out of our local travel because people have to hitch up within 5 miles of the town. They go to McComb city because they can take the first train. Naturally they go to McComb city and buy their tickets and McComb city gets the benefit of our receipts.

Q. With respect to the traveling public, is Magnolia a place where the people as a rule are well to do, and where they do a good deal of traveling?

A. People are well to do around Magnolia, and they travel a good deal.

Q. You have a large white population in the county?

A. Yes, sir.

Q. Now, as to the facilities for travel between McComb city and Magnolia. State whether or not it is a common occurrence for traveling men to come as far as McComb south on the limited, or No. 1, and then have to hire a team at McComb city and drive to Magnolia?

A. We have as many as 1 to 6 that drive to Magnolia from McComb city a day by team.

Q. Do you know whether it is a common occurrence for the people of Magnolia to have to hire a team, or have their team sent to McComb city and drive down to Magnolia?

A. It is a common occurrence. We all resort to that scheme.

Q. To what extent do the people of Magnolia have to resort to this drive across the country?

77 A. Well, it is a matter, it seems to me, it happens every day; somebody is doing it. Now, a case like that yesterday,—my father is 75 years of age; he had to leave home 2 hours before his regular time for No. 4, that fast train going north. He had to take that local train and travel to Brookhaven. In the meantime he was worried about his baggage. He had his baggage sent down the day before to McComb city, and all that kind of business. It is very annoying to us.

Q. Now state whether there are travelers from the northern portions of Mississippi, north of Jackson to Magnolia. What *has* (have) you to say as to that?

A. We have some regular drummers that reside around the northern portion of the State of Mississippi and make Magnolia every Monday morning.

Q. How do they get to Magnolia?

A. Come down Sunday evening; come down as far as McComb city and wait for the slow train.

Q. That is their habitual custom?

A. Yes, sir.
Q. When you had No. 1 did that happen?
A. No, sir; they came through on No. 1.
Q. Came direct to Magnolia?
A. Came direct to Magnolia. They are the people that are making the real noise about No. 1 as much as we are. They are the people that want it.
Q. Describe to the court how it inconveniences the drummers?
A. That is one instance of my father's.
Q. When they could go down on No. 1, what train did they take back north?
A. Twenty-four.
Q. What time did that come along?
A. Ten.
Q. They could come down early in the morning and back at 10, and go north how far until that night train came south?
A. They could go north to Jackson.
Q. They could take the train and come south and *worth* (work) the south part of the road?
A. Yes, sir.

Cross-examination:

Q. These drummers that you are talking about. What time did No. 1 get to Magnolia when it stopped there?
A. About 7 o'clock. It had hours ranging from 5 to 7.
Q. What time does No. 5 get to Magnolia?
A. 5:37 now.
78 Q. What is the reason the drummers cannot take No. 5?
A. No. 5 is local north of McComb.
Q. It puts them into Magnolia the same hour—No. 5 and No. 1?
A. No. 5 puts them there too early.
Q. How much too early?
A. I a fellow is accustomed to getting up at 7, he don't like to get up at 5.
Q. What is the difference?
A. 5:37 to 7:45. It is two hours and eight minutes.
Q. You said No. 31 is an old, out of date train. How is that train constituted? What cars do they have on it?
A. They have old, out of date cars.
Q. What cars do they have?
A. That is the kind I tell you they have. They have passenger cars as well as freight cars.
Q. Do they have ten cars in that train?
A. I know they have two passenger cars.
Q. Do they have a baggage car?
A. Sometimes they do, and sometimes they don't. Sometimes they have a freight car as a baggage car.
Q. Do they ever carry freight on that train?

A. I don't know. They carry spades and shovels.
Q. For what?
A. Workmen's tools; shovels and spades.
Q. For what?
A. Oh, I don't know. I suppose for railroad services.
Q. Do they make a practice of carrying spades and shovels in that train?
A. I think they do.
Q. And put them on the s[illegible]
A. I have seen them on the [illegible]nd hatchets.
Q. Do they carry any cattle [illegible]?
A. I don't know. Some of the people look like cattle.
Q. You are sort of an aristocratic people in Magnolia?
A. When we pay full fare we like to ride decent. We don't like to ride with negroes and dagoes.
Q. Do you want us to rule negroes and dagoes off of No. 3? What difference would it make on the negro and dago question?
Q. You have separate compartments you put the negro and dago in on No. 3.
Q. No. 3 puts dagoes in separate departments?
A. They should have a separate compartment. They don't flock in amongst us like the negro.

79 Q. Talking about your father and his having to go to Brookhaven to buy a ticket. What need did he have to go to Brookhaven?

A. He got off of No. 4 to take the cannon ball.
Q. He did not have to go to Brookhaven to get it?
A. No, sir; he got it the day before. He had the ticket sent down there.
Q. How far is it from Magnolia to McComb city?
A. Between 6 and 7 miles.
Q. You said something about people having to get off of the limited at McComb City, and drive to Magnolia. Why couldn't people take the evening local to Magnolia?
A. We do do that.
Q. Then they don't have to drive down?
A. It is an awful wait sometimes—an hour when a man is busy. Sometimes you can make more than $2.00 being home.
Q. If they do take a team it is just because they would rather do that than wait an hour?
A. It is a question of business.
Q. If they get in a livery stable team and drive from McComb city to Magnolia, it is because they don't want to wait an hour?
A. Sometimes it is and sometimes it isn't. Sometimes it is a question of getting home to attend to your business.
Q. Still, that is a case where he didn't want to wait an hour?
A. Sometimes he would have to wait two hours for that little dirt train like 33 and 34.
Q. Is that a dirt train?

A. We call them that.
Q. Who considers Magnolia the chief city of trade in that country?
A. I do.
Q. Who else?
A. I don't know. I am only talking for myself.
Q. When you said it was considered so, you mean you consider it so?
A. Well, it is.
Q. Well, who considers it?
A. It is, among my family.
Q. How many business men among your family?
A. About 5 of us.
Q. You have a family that has that idea of it?
A. Yes, sir; we have that opinion of it.
Q. Now, you speak of No. 1 being your southbound train regularly. Who considered it that?
A. I did for one.
Q. Anybody else that you can name?
80 A. I would suppose that Mr. Lambkin would consider it as such.
Q. He is here to speak for himself. Can you name anybody else now?
A. Well, I could; yes, sir. Some of the old inhabitants consider it that way.
Q. Who are they?
A. Mr. Wolf and Mr. Travis.
Q. Did you ever have any conversation with Mr. Wolf on the subject?
A. Oh, yes, sir.
Q. And Mr. Travis?
A. Yes, sir.
Q. They told you they considered that a regular southbound train?
A. Oh, they all considered it so.
Q. When No. 1 stopped at Magnolia is it not a fact there was no No. 5?
A. Yes, sir.
Q. Is it a fact there was no No. 5?
A. Yes, sir. No train known as train No. 5.
Q. It took the place of No. 1—No. 5 did?
A. I don't know what it took the place of.
Q. It run by at the same time?
A. No, sir.
Q. What was the difference?
A. Some two hours difference.
Q. What sort of train is No. 5?
A. It is a little better than 31.
Q. It has a sleeping car on it?
A. Yes, sir. You can't use it at Magnolia.

Q. Why?
A. It comes too early; they will not let you in.
Q. Who won't?
A. The sleeping car conductor.
Q. Could you get in the sleeper on No. 1?
A. Yes, sir; any time.
Q. You mean to say the Pullman cars on one train will not let you in and the other one will?
A. They are always locked when they pass our place on No. 5.
Q. How many passenger cars on No. 5?
A. I have seen one besides the sleeper. Two is a regular equipment, I would suppose.
Q. Now, with all the talk about your accommodations, etc., is it not a fact that this train that stops at Magnolia goi south
81 to New Orleans, there was seating capacity in the cars for all the people that want to go?
A. I could not answer that question. I don't patronize 31 going south.
Q. What car do you go on?
A. I go on No. 5.
Q. What is the difference between those two trains?
A. No. 5 is a fast train.
Q. I mean the difference in the time?
A. No. 5 is a fast train.
Q. How much?
A. It has been coming about 40 minutes earlier when it is on time. When it is not on time it is two or three hours late.
Q. Do you know what the running time is of those trains between Magnolia and New Orleans?
A. Thirty-one comes up at 6, and I believe is due in New Orleans at 9:30. No. 5 is due at Magnolia at 5:37, due to arrive in New Orleans at 8:05, I think. That is 2 hours and 32 minutes. Difference of one hour in the running time, about.
Q. Do you know what the running time of No. 1 is?
A. It is about the same as No. 5.

Mr. L. L. LAMBKIN, being duly sworn as a witness on behalf of the defense, testifies as follows:

Q. State your name, age, residence and occupation.
A. I am a resident of Magnolia, Mississippi, age 50 years, and I am a merchant.
Q. What other positions do you hold there besides being in the mercantile business?
A. I am president of the Magnolia cotton mills, and I am vice-president of the Lambkin Mercantile Company. I am also president of the Lambkin Realty Company.
Q. What about the Magnolia bank?
A. I am a director in the bank.

Q. To what extent are your interests affected by the welfare o Magnolia?

A. Well, very largely; I have a very large interest there; th largest interest I have is at Magnolia.

Q. State what place in your county is the commercial center o the county.

A. We consider Magnolia as being equal in importance to an other place in the county.

82 Q. As to its manufacturing interests, how does it rank?

A. I think larger than any other place in the county.

Q. As to its mercantile interests and capitalization?

A. It is hardly equal to Summit, but it is greater than any othe place aside from Summit. Our bank deposits are more than th balance of the county combined. There is 2 banks in Summit there is one in McComb city and there are two banks in Magnolia and our deposits are more than the other banks combined. I think the larger volume of business is done with the banks there than th other 3 banks, both loans and deposits.

Q. When was your cotton and oil mill installed?

A. Last fall.

Q. How many operatives has it?

A. One hundred.

Q. To what extent does that add to the population of Magnolia?

A. I expect it must be at least 250.

Q. How long have you been a citizen and resident of Magnolia?

A. Nine years.

Q. What train, if any, was considered the regular through trai for business in Magnolia up to a short time before April, 1903?

A. We had the mail train No. 1. That is the train we relie upon.

Q. At what hour did that arrive?

A. About 7 o'clock.

Q. About the same hour it does now?

A. Yes sir.

Q. What other trains were there?

A. We had the McComb City accommodation. It always passe there at 6 o'clock.

Q. That commenced at McComb and went to New Orleans?

A. Yes sir.

Q. What other trains did you have?

A. We had 23 at night. It passed there somewhere about o'clock in the afternoon.

Q. Those were the trains that were the regular trains for Mag nolia?

A. Yes sir.

Q. When was No. 5 installed?

A. I don't remember exactly.

83 Q. When was No. 3 installed?

A. No sir. I don't remember exactly about that.

Q. Up to within about 4 months prior to April, 1903, state what train stopped regularly, going south, at Magnolia?

A. Well, we had No. 1 and No. 23 going south; then, we had No. 24 and a train at night, but I don't remember just exactly the number of it.

Q. How about No. 5 going south?

A. We had no train No. 5 going south.

Q. No. 5 goes south?

A. Do you mean now?

Q. No sir, I mean up until about 4 months of the order of the commission was made, what trains did you have?

A. There was No. 5 and No. 1 and No. 23.

Q. What trains do you have now?

A. No. 31, which takes the place of No. 23 I think. We have No. 5 and No. 24 going north.

Q. Going south?

A. We have only No. 5 and No. 31.

Q. In the afternoon you have what?

A. We have a train that passes there about 7 o'clock in the evening.

Q. No. 23?

A. Yes sir, it takes the place of No. 23.

Q. As I understand, shortly before the order by the commission was made, No. 1 had been for a number of years in the service at Magnolia, and was taken off from service at Magnolia?

A. Yes sir. We have no service of that train.

Q. Since this order, what has happened to 23?

A. We have no 23, but we have 33 instead of that.

Q. Thirty-three stops at Jackson?

A. Yes sir.

Q. And arrives at Magnolia about 6 o'clock in the evening?

A. I think that is about the time.

Q. State to the court what character of service 23 furnished Magnolia at the time this order of the commission was made?

A. Twenty-three gives us very poor service. I had occasion to use it as much as any one. My family were in New Orleans at that time. I spent my time in Magnolia. I undertook to go on 23 down to New Orleans on Saturday night. I arrived in New Orleans after 1 o'clock in the morning. It was a train that was nearly
84 always behind. It was behind when it got to Magnolia. Sometimes I would get tired and go home and take No. 5. I didn't want to go on Sundays, but finally I took No. 5 and never attempted to go on 23 at all. I was broken up so bad on 23, taking all night making stops. I finally quit going on it. I don't know that I have been on 23 or 33 since I quit attempting to take either one of the trains.

Q. What is the character of 31 and its service; that is, the McComb City accommodation?

A. Well, that is a train made up out of McComb city. I don go on that train.

Q. Why?

A. I prefer to take No. 5 on account of the difference in the tw *train* (trains).

Q. What is the difference?

A. No. 31 is made up of local traffic and makes a good many stop It is a local train and sometimes it is filled with people; may b there wouldn't be any standing room. Sometimes there are vacan seats. On account of the character of travel, I never take it.

Q. What character of travel is there on it?

A. Laborers and saw mill hands, especially Monday morning There are people out of the factories who visit, and return Monda morning. Monday morning is usually the time I go to New O leans. The train is always filled with that character of people. A I tell you, sometimes even the platforms are crowded. I can get better train by going a little earlier. If that was a good train an good service, I would prefer to take that on account of the time would give me at home.

Q. You have quite a family in Magnolia and around there?

A. Yes sir. We have had a standing joke, in that communit that if the conductor didn't find some one of them on there there wa something the matter.

A. As to the travel of your family and connections on 31, wha have you to say?

A. They never take 31.

Q. Why?

A. On account of its being a mixed train, and that it is filled u with that class of people.

Q. Is that the same rule with other people in your station of lif at Magnolia?

A. I couldn't say, but I suppose it *it* (is). I have a son an daughter going to school in New Orleans. They go down on No. and come back on No. 6. It would be preferable for the
85 to go on the McComb City accommodation and return on tha because it puts them at home earlier and they would leav later, and still get there time enough for school; I never permi them to take it.

A. As to the service with No. 5. What experience have you ha with the service of No. 5?

A. Along the first of April I wanted to go to San Antonio, Texa I wanted to get my trunks checked the evening before. I travel o a 30 trip ticket. I could not get my trunks checked until after applied to Mr. Price, the attorney of the road.

Q. Why couldn't you get them checked?

A. They told me the office wasn't open. I sent my draym down there.

Q. That was the evening before you were going to take No. 5?
A. Yes sir.
Q. What hour was it you sent the trunks?
A. I don't remember the exact time. We close our store at 6 o'clock. I think it was at the time I closed my store up. At all events, he came back and reported he couldn't get the checks on account of the depot being closed. I went there to see about it, and there was nobody there, and my trunks were on the depot platform. I saw Mr. Price.
Q. Who is Mr. Price?
A. Attorney for the railroad at Magnolia. He told me he would see if he couldn't secure them for me. Along about 8 o'clock he told me he had succeeded in arranging to get my checks on my trunks. He sent the checks to me. The next morning when I went to take No. 5 as I started off, I noticed my trunks were on the platform. I mentioned the fact to the conductor, and I had him stop and I had my drayman to put the trunks on.
Q. State any other experience that you know of in respect to passengers attemping to take No. 5?
A. I had a young lady visiting me from Alexandria, Louisiana. She couldn't get her trunk checked. She wanted to go through. I succeeded in getting her trunks checked the next morning. Her baggage was checked to New Orleans. I tried to get her baggage re-checked to Alexandria, and after passing some telegrams in reference to the trunk, I had to pay express on them because she had gone on and left them in New Orleans.
Q. Where did she have a ticket to?
A. To New Orleans. If she had had her trunk checked to
86 New Orleans she could have presented her ticket and gotten it re-checked to Alexandria.
Q. When did that occur?
A. Some time during the month of April.
Q. State whether or not you know of any other instance?
A. I don't locate any.
Q. Those were the extent of your experience?
A. Yes sir.
Q. What is the amount of cotton Magnolia ships each year?
A. Between 11,000 and 14,000 bales of cotton.
Q. How many manufacturing plants has it?
A. It has three press oil mills.
Q. How much invested?
A. About $75,000 I think. I think they have already handled between 5,000 and 6,000 tons of seed this year. We have a ten ton ice plant, and an electric light plant. We have a cotton mill with 5,000 spindles and 150 looms. I believe those are all the manufacturing interests we have. Well, we have a textile mill. We have 20 looms aside from the cotton factory.
Q. You travel a good deal, do you not, Mr. Lambkin?

A. Yes sir.

Q. When you buy tickets to points outside of the State, where do you get them?

A. I usually have to get them at McComb city or New Orleans.

Q. Where do you get your mileage books?

A. I never travel on mileage books. My business is mostly at Magnolia and New Orleans. I have a mill at Kentwood, Louisiana. I usually buy local fare tickets.

Q. There is a railroad at Kentwood owned by the Banner Lumber Company?

A. Yes sir.

By the COURT:

Q. In what parish is Kentwood?

A. Tangipahoa.

By Mr. GREEN:

Q. It is a common carrier, and a 31 mile road?

A. Yes sir.

Q. It carries United States mail and passenger traffic and freight?

A. Yes sir.

87 Q. State to the court what reasons you have for your request that these two trains, No. 1 and No. 3 to stop at Magnolia?

A. In the winter season especially, I am very busy, and always like to make as much time as possible. I do it on account of business and for the comfort there is in the travel. They are better trains than any other, and I think my business would be facilitated and I think it would be to the general interest of our town to have them stop.

Q. State whether there is much interstate business, interstate travel from Magnolia out of the State?

A. Well, yes sir; there is considerable. Not so much as we do have into Magnolia. We have more travel into Magnolia than out of there.

Q. Ha*be* (have) you much interstate travel into Magnolia?

A. Yes sir.

Q. What about the expression of opinion that there were only a few people in the State north of Canton that go into Magnolia?

A. It being the court house, and questions coming up there that involve land matters and local matters of different kinds, we have a considerable amount of business of that kind.

Q. What about the trains No. 1 and 3 stopping there during the term of court.

A. I think it is a common custom to stop No. 1 during the term of court.

Q. How about No. 3?

A. I don't think No. 3 stops only on special orders.

Q. Suppose there is anybody connected with the railroad who wants to take No. 3 or get off No. 3 there, don't they stop for them?

A. Yes sir.

Q. They don't find any difficulty in stopping to let off the railroad officials, do they?

A. No sir.

Q. What railroad officials do you mean?

A. Illinois Central.

Q. Who do you mean—what parties?

A. For instance, they stopped yesterday for the railroad agent. They stopped No. 4 yesterday to bring Mr. Groce.

Q. Mr. Price, one of the attorneys, they stop for him constantly, don't they?

A. Yes sir.

88 Q. You have seen them stop to put off Mr. R. N. Miller, of Hazlehurst, haven't you?

A. Yes sir.

Q. And you have seen them stop to take them on—haven't you?

A. Yes sir. In fact, I have taken advantage of the train stopped by Mr. Miller, to get on once or twice myself.

Q. Is there anything else that occurs to you that would be material in this case. I would be glad for you to state it?

A. Nothing at all, I don't believe.

Cross-examination:

Q. Do you mean to say to the court that No. 3 stops for Mr. Price every time he wants to go anywhere?

A. I couldn't say that. I know that they have stopped for him. I have seen it.

Q. Do you know what business he was engaged in at the time?

A. No sir.

Q. Isn,t that true in regard to Mr. Miller?

A. I don't know what his business was to have them stop. I knew he had them stop. I considered their business was private and I didn't examine into it.

Q. You have seen them stop and let Mr. Price or Mr. Miller, their officials, off, that is all you know. You have no knowledge of what their business was?

A. No sir. If he told me, I have forgotten.

Q. You spoke of the service of 23 being inferior because you sometimes got into New Orleans late?

A. Not only sometimes, always. I never have any recollection of getting in on time.

Q. Are you prepared to say that that train never runs on time?

A. At the time I was on it I believe I would be safe in making the assertion it never got into New Orleans on time.

Q. When was that?

A. This last winter a year ago.

Q. How many times were you on it?

A. I went down once a week every week.

Q. For how long?

A. I want once or twice a week, but I didn't avail myself of the opportunity of taking No. 3 all the time.

Q. Are the limited trains ever on time?

A. No. 5 at that time was hardly ever on time.

89 Q. I mean No. 1 and No. 3?

A. Yes sir. Sometimes they are a little late.

The defense here introduced in evidence the record of the commission in this matter, and the proceedings before the commission upon which the order in controversy was predicated.

The defense rests.

I. C. R. R. Co.
v.
Miss. R. R. Commission.

I, Robert L. Peyton, stenographer, do hereby certify that the above and foregoing pages contain a true and correct transcript of all the evidence as delivered on the hearing of the above entitled cause, and as taken down by me at the hearing of the same.

(S'd) ROBERT L. PEYTON,
Stenographer.

90 State of Mississippi,
County of Pike.

To the railroad commissioner for the State of Mississippi:

We the undersigned citizens of the town of Magnolia, respectfully petition your honorable body to issue an order making Magnolia a regular stop for passenger trains—one, three & four. Magnolia being one of the most progressive towns in the State, and the county site of this country, we believe that we are entitled to have these trains to make regular stops here. We believe it will be for the best interest of the public, as well as for our town, that your honorable body

issue an order requiring the above passenger trains one, three and four to make regular stops here.

A. L. LAZON.
JEROME FORD, Merchant.
W. A. DUNN, Merchant.
W. S. HOKE.
E. W. REID.
HILLER & CO.
SAM'L COHN.
LOUIS LAZAR.
C. D. MILLER.
E. E. THIGPEN.
J. A. LAMPTON, Mayor.
SAM ABRAHAM.
J. H. ANDREWS.
F. T. KOMMUNPF.
NICK MYER.
H. C. DAVIS.
A. D. FELDER.
S. G. HOUOUH.
W. T. BUTLER.
J. J. LEE.
MAGNOLIA ICE MFG. CO.
JAS. E. NORWOOD.
J. M. MOORE.
J. C. HOUGH, Druggist.
J. W. ELLIOTT.
W. M. LAMPTON.
CURRIE & DAVIS.
DAVID COHN.
M. SCHWARTZ.
FRED C. AND REWS.
W. M. WROTEN.
W. C. VAUGHN, Ch'y Cl'k.
G. W. ROBERTSON.
A. S. SMITH.
J. B. STERNBERGER.
J. BLOOM.
C. S. VAUGHN.
WM. H. MOISE.
R. B. LARBUYHT.
A. C. CHERRY.
C. F. ENGLAND.
J. E. HARWOOD.
LEE TRAVIS, P. M.
LAMPTON MER. CO.
W. H. HOUGH.
S. B. WILLIAMS, Co. Tr.
J. A. KRAMER.
S. COHN & SON.
SIMON COHN.
LEWIS ABRAHAMS.
J. A. WOLFE & SONS.
W. A. GILL.
A. P. SPARKMAN.
SAM WOLFE.
A. E. COHN.
A. D. NUNNERY.
C. E. DAVIS.
D. M. HOUGH.
A. E. MONTGOMERY.
S. L. HARDEMAN.
W. M. DAVIS.
L. L. LAMPTON.

91 Board of Mayor and Aldermen.

JOHN A. LAMKIN, Mayor.
SAM COHN.
W. M. LAMPTON.
JOS. R. NORWOOD.
F. C. KORMRUMF.
E. J. SIMMONS, Clerk.

MAGNOLIA COTTON FACTORY,
By A. T. FALER, Vice President.
MAGNOLIA OIL MILL.
R. A. MONTGOMERY, Manager.
PEOPLES BANK.
MAGNOLIA BANK,
Per W. A. GILL, Cashier.

First Term, April, 1903, Miss. R. R. Com.

JACKSON, MISS., Apr. 6th, 1903.

1434—The citizens of Magnolia presented petition praying that the I. C. R. R. be required to make regular stops with its trains 1, 3, & 4 at Magnolia.

Case ordered placed on docket and Supt. Dunn advised that matter would be considered at the next meeting—Monday, Apr. 20th, 1903.

STATE OF MISSISSIPPI:

J. D. McInnis, President; J. C. Kincannon, A. Q. May, Commissioners; John A. Webb, Secretary.

Railroad Commission.

JACKSON, MISS., Apr. 3rd, 1903.

O. M. Dunn, ass't gen. sup't., I. C. railroad, New Orleans, La.

DEAR SIR: Attached hereto I hand you a copy of a petition received this date from the citizens of Magnolia praying that an order be issued by this commission requiring your trains Nos. 1, 3 and 4 to make regular stops at Magnolia. This petition will be read at the next meeting, and the meeting on April 20th will be set for its hearing. You will therefore take due notice and be governed accordingly.

Very truly yours, —— ——, Secretary.

92 STATE OF MISSISSIPPI:

J. D. McInnis, President; J. C. Kincannon, A. Q. May, Commissioners; John A. Webb, Secretary.

Railroad Commission.

JACKSON, MISS., April 7, 1903.

O. M. Dunn, asst. gen'l supt., I. C. R. R., New Orleans, La.

DEAR SIR: Referring to my letter of the 3rd, to which was attached copy of a petition from the citizens of Magnolia praying that an order issue from this commission requiring your trains 1, 3 and 4 to stop regularly at said Magnolia, this is to advise you that the case has been docketed and set for hearing the third Monday of April, the 20th.

Very truly yours, —— ——, Secretary.

OFFICE OF THE MISSISSIPPI RAILROAD COMMISSION,
JACKSON, MISS., April 21st, 1903.

In the Matter of the Petition of THE CITIZENS OF MAGNOLIA *vs.* THE ILLINOIS CENTRAL RAILROAD CO., Praying that This Commission Order the said I. C. R. R. Co. to Make Magnolia, Mississippi, a Regular Stop for Trains One (1) and Three (3) and Four (4).

The same coming on to be heard, the complainants being present and heard, and the defendant, The Illinois Central Railroad, by its assistant general superintendent O. M. Dunn, being present and heard, it is ordered that the prayer of the petitioners be granted in part, as follows, to wit: That trains one and three be required to stop on flag, to be effective on and after the first day of May, 1903; that in so far as the petition refers to number four, the same is denied.

By the commission.

—— ——, Secretary.

I, John A. Webb, secretary of the Mississippi Railroad Commission, do certify that the above is a true and correct copy of the order as passed by said commission in the matter of The Citizens of Magnolia *vs.* The I. C. R. R. Com. the 21st day of April, 1903, praying that trains Nos. one, three and four stop at Magnolia as a regular stop.

[SEAL.]

—— ——, Secretary.

93 STATE OF MISSISSIPPI, }
Hinds County. }

I, T. R. Maxwell, secretary of the Railroad Commission of the State of Miss., do hereby certify that the above and foregoing five pages contain true and correct copies of the records in the case of The Citizens of Magnolia *vs.* The I. C. R. R. Co. No. 1434 as the same appear on record and on file in this office.

Witness my hand and seal this May 2nd, 1904.

[SEAL.]

T. R. MAXWELL, Sec'y.

Indorsed: Exhibit "B" filed by the defense. I. C. R. R. Co. *vs.* Miss. R. R. Com. R. L. Peyton, stenographer.

Second Term, May, 1904, Miss. R. R. Commission.

JACKSON, MISS., May 17th, 1904.

Stop at Vaiden.

CITIZENS OF VAIDEN
vs.
I. C. R. R. Co. } No. 1513.

Petition to Have Train No. 3 Stop on Flag.

It is ordered by the commission that fast train No. 3 stop on flag at Vaiden, Miss., to take on passengers for Jackson and for all points south of Jackson at which said train makes regular stops.

Ass'nt Gen'l Supt. H. McCourt and Supt. J. G. Neudorfer appeared before the commission in this matter.

STATE OF MISS.,
Hinds County.

I, T. R. Maxwell, sec'y of the Miss. Railroad Commission do hereby certify that the above order is a true and correct copy of an order of record on Minute Book 4, page 246, in this office.

Witness my official signature this July 25, 1904.

[SEAL.] T. R. MAXWELL, Sec'y.

94 Final Decree.

In the Circuit Court of the United States for the Southern District of Mississippi. In Equity.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
MISSISSIPPI RAILROAD COMMISSION. } No. 702.

This cause having been submitted at the May term, 1904, of this court, by consent of both parties and by order of the court for decision and decree in chambers and for entry of such decree on the minutes when made with the same force and effect as if made in term time, and the same now having come on for final hearing on the pleadings, exhibits, proofs and agreements of counsel, and the court having heard the arguments of counsel for the respective parties, and being sufficiently advised in the premises, and being of opinion that the order of the Railroad Commission of the State of Mississippi sought to be enjoined in this suit, and whereby it was ordered that complainant's passenger trains numbered one and three be required to stop at the town of Magnolia, the county seat

of Pike county, State of Mississippi, sought to be enjoined in this suit, and whereby it was ordered that complainant's passenger trains numbered one and three be required to stop at the town of Magnolia, the county seat of Pike county, State of Mississippi, on flag, on and after May 1st, 1903, was not an unlawful or unreasonable requirement, and that complainant is not entitled to relief, it is therefore ordered, adjudged and decreed that the preliminary injunction heretofore granted and issued herein be and the same is hereby dissolved, and that the prayers of complainant's bills be denied and that the complainant's original and supplemental bills be and they are hereby dismissed, and that defendants go hence without day and to have and recover of the complainant its costs in this behalf expended, to be taxed for which execution may issue. That thereupon the complainant, Illinois Central Railroad Company, in open court, prayed an appeal from this decree to the United States court of appeals, for the fifth circuit, and the said appeal is by the court hereby granted to operate as a supersedeas, upon the complainant entering into bond, payable to the defendant herein in the penal sum of five hundred dollars with sureties to be approved by the clerk of this court, and conditioned according to law.

95 Ordered, adjudged and decreed, this June 28th, 1904.

H. C. NILES, Judge.

O. K.
MAYES & LONGSTREET,
Sol'rs for Compl'nt.

* * * * * * *

96 UNITED STATES OF AMERICA,
Southern District of Mississippi.

In the Circuit Court. In Equity.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
MISSISSIPPI RAILROAD COMMISSION.

In the foregoing cause, on appeal to the circuit court of appeals of the United States in and for the fifth circuit, sitting at New Orleans, Louisiana, we the counsel for the Mississippi Railroad Commission and the individual members thereof, do hereby waive the issuance of service of citation, and agree that the cause shall be docketed and heard on the appeal of the railroad company in said circuit court of appeals without citation.

And it is also agreed between the appellants and the appelle-s that in making the record in this cause, the character of the Illinois Central Railroad Company may be omitted therefrom, the same being a statute of the State of Illinois, and that counsel in their arguments and printed briefs shall use and print such portions thereof in such briefs as they may deem material and see proper to use.

It is also agreed that the written lease of the main line made in the year 1882 by the Chicago, St. Louis & New Orleans Railroad Company, and also the written lease of the Mississippi Division line made in the year 1887, may be omitted from such record. And it is further agreed that the said two leases were ordinary railroad leases for four hundred years from date, and the effect of the same, so far as this controversy is concerned, is only material as show-n that the Illinois Central Railroad Company was holding and operating the said lines of railroad from Cairo, Illinois, to New Orleans, Louisiana.

97 & 98

It is further agreed that the time tables and the schedule, exhibits to Mr. Dunn's affidavit and Exhibit No. 1 to Mr. Dunn's deposition, may be omitted from said transcript, and the originals thereof may be filed with the papers of this cause in the said circuit court of appeals for reference as part of the record herein. This is ordered to avoid encumbering the printed record with an unnecessary and confusing mass of irrelevant details.

WILLIAM WILLIAMS,
Attorney General of Mississippi.
MAYES & LONGSTREET,
Sols. for Compl't.

* * * * * * *

99 Supplemental Transcript.

United States Circuit Court of Appeals, Fifth Circuit.

ILLINOIS CENTRAL RAILROAD CO., Appellant,
versus
MISSISSIPPI RAILROAD COMMISSION ET AL., Appellees. } No. 1395.

Supplemental Transcript of Record.

(Assignment of Errors.)

(Original record filed Dec. 7, 1904.)
U. S. circuit court of appeals. Filed Dec. 21 1904
CHARLES H. LEDNUM, Clerk.

100 In the Circuit Court of the United States for the Southern District of Mississippi.

ILLINOIS CENTRAL RAILROAD COMPANY
versus
MISSISSIPPI RAILROAD COMMISSION. } In Equity. No. 702.

Comes the appellant in the above entitled cause, to-wit: The Illinois Central Railroad Company, and for error assigns as follows:

1. The honorable the circuit court erred in its decree of June 28th, 1904, in holding that the order of the Railroad Commission of the

State of Mississippi sought to be enjoined in this suit, whereby complainant's passenger trains, numbered one and three, were required to stop at the town of Magnolia on flag on and after May 1st, 1903, was not an unlawful or unreasonable requirement, and in holding that the same did not impose an unlawful burden on interstate commerce, in violation of section 8 of article I of the Constitution of the United States; and that the same did not unlawfully interfere with the carriage of mails.

2. The honorable the circuit (court) erred in its decree of June 28th, 1904, in decreeing that the preliminary injunction theretofore granted in this cause be dissolved, and that the prayers of appellant's original bill be denied, and that the said original bill and the supplemental bill be dismissed.

Wherefore the appellant respectfully submits and prays that the said decree should on appeal be reversed.

MAYES & LONGSTREET,
Attorneys for Appellant.

101 & 102 United States Circuit Court of Appeals, Fifth Circuit.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
v.
MISSISSIPPI RAILROAD COMMISSION, Appellee. } No. 1395.

In the above entitled cause it is agreed that the foregoing assignment of errors — filed in said cause in the circuit court of the United States for the southern district of Mississippi, on June 30, 1904, together with the appeal bond in this cause, but that the same was mislaid and was not certified with the transcript of the record to this court, as should have been; and it is hereby agreed that the same may be received and treated in all respects as a part of this record and as if duly certified to the circuit court of appeals along with the said record as and when the said record was transmitted to this court.

EDWARD MAYES,
Attorney for Appellant.
MARCELLUS GREEN,
Attorney for Appellees.

* * * * * * *

103 Filed 4 Day of Ap'l, 1905. Charles H. Lednum, Clerk of the United States Circuit Court of Appeals.

United States Circuit Court of Appeals, Fifth Circuit.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
vs.
MISSISSIPPI RAILROAD COMMISSION ET AL., Appellees. } Number 1395.

Appeal from the Circuit Court of the United States for the Southern District of Mississippi.

In April 1903, 68 citizens of the town of Magnolia, the county seat of Pike county, Mississippi, presented a petition to the Mississippi Railroad Commission, as follows:

"We, the undersigned citizens of the town of Magnolia, respectfully petition your honorable body to issue an order making Magnolia a regular stop for passenger trains—one, three & four. Magnolia being one of the most progressive towns in the State, and the county site of this county, we believe that we are entitled to have these trains to make regular stops here. We believe it will be for the best interest of the public, as well as for our town, that your honorable body issue an order requiring the above passenger trains one, three and four to make regular stops here."

By order of the commission, notice was given O. M. Dunn, assistant general superintendant of the Illinois Central Railroad Company. The petition coming on to be heard April 21, 1903, the commission ordered that "the prayer of petitioners be granted in part, as follows, to-wit: That trains one and three be required to stop on flag, to be effective on and after the first day of May, 1903; and, in so far as the petition refers to number four, it is denied." The railroad commission acted under authority conferred on it by sections 3550 and 4302 of the Code of Mississippi (1892):

"3550. To stop all passenger-trains, if, etc., at county seats.—Every railroad shall cause each and all of its passenger-trains
104 to stop for passengers at all county seats at which it has a depot, at the discretion of the railroad commission."

"4302. Necessary depots to be maintained.—Every railroad shall establish and maintain such depots as shall be reasonably necessary for the public convenience, and shall stop such of the passenger and freight trains at any depot as the business and public convenience shall require; and the commission may cause all passenger-trains to permit passengers to get on and off in a city at any place other than at the depot, where it is for the convenience of the traveling public. And it shall be unlawful for any railroad to abolish or disuse any depot when once established, or to fail to keep up the same and to regularly stop the trains thereat, without the consent of the commission."

On May 6, 1903, the appellant, complainant below, filed its bill against the appellees, defendants below, seeking to enjoin the enforcement of the foregoing order of the railroad commission.

The bill shows that "the complainant is a corporation of the State of Illinois, and the defendants, the president and members of the Mississippi Railroad Commission, are citizens of the State of Mississippi; that complainant is operating an interstate line of railroad extending from the city of New Orleans in the State of Louisiana on the south, north through the said State of Louisiana and the State of Mississippi, and the States of Kentucky and Tennessee, and Indiana and Illinois, to the Great Lakes of the northwest, connecting at various points with other interstate lines of railroads.

"That the line of railroad operated by it has been established by the Congress of the United States and is now a national highway for the accommodation of interstate commerce and the mails of the United States, and has been recognized and promoted as such, as will appear by reference to an act of Congress of September 20th, 1850 (Ninth Statute at Large, page 466), granting a right of way and sections of land to the State of Illinois to aid in the construction of a railroad from the southern terminus of the Illinois and Michigan canal to a point at or near the junction of the Mississippi and Ohio rivers, with branches to Chicago and Dubuque, to be and remain a public highway for the use of the Government of the United States, free from all toll or other charges upon transportation of any property or troops of the United States, and on which mails of the United States will at all time be transported, and in order to aid in the construction of said railroad, made like grants to the States of Alabama and Mississippi respectively for the purpose of aiding in the construction of a railroad from the city of Mobile to a point at or near the mouth of the Ohio river, also by reference to an act of February 10th, 1850, of the State of Illinois, chartering the complainant under the name of the Illinois Central Railroad Company, and ceding to it the rights and lands granted to the State by the said act of Congress, for the purpose of constructing and maintaining within the State such trunk lines and branches describing the southern terminus as a point at the city of Cairo, and by reference to an act of Congress of June 15th, 1856, (Fourteenth Statutes at Large, page 66) entitled "An act to facilitate commercial, postal and military communication among the several States," and also by reference to the act of Congress of December 17th, 1872, and of February 14th, 1883.

"That heretofore the complainant leased from the Chicago, St. Louis and New Orleans Railroad Company a line of railroad extending from the south bank of the Ohio river opposite Cairo southward through the States of Kentucky, Tennessee, Mississippi and Louisiana, to the city of New Orleans, which said railroad had been previously formed by consolidations authorized by act of the legislature of the several States mentioned, thus forming the line of interstate railroad heretofore mentioned.

105 "That owing to the exigencies of its interstate business an the requirements of modern commerce and passenger tran portation, as well as the freight and the United States mail, it ha been from time to time required to shorten its schedules, and t maintain and operate certain fast through trains intended primaril and chiefly for the interstate transportation and interstate com merce.

"That two of its said trains doing its interstate business are two sout bound trains, one designated as train number one, and one as trai number three, number one being commonly known as the fast mai and number three as the New Orleans and Chicago limited; tha these two trains are run expressly for the purpose as aforesaid o carrying on an interstate business, and for the transportation of th United States mail; that these two trains are run under specia schedules for the purpose and of necessity to make close connection with other through trunk lines of railroad doing an interstate busi ness connecting with complainant's line of railroad at New Orlean in the State of Louisiana, and at Chicago in the State of Illinois, an at various intermediate points; that in order to maintain the neces sary schedules for the operation of these interstate trains, it is im possible and wholly impracticable to stop at all stations, and further that these said trains being south bound trains only stop regularly at junction points and all such points of importance in the State o Mississippi which are necessary and which justify said stops.

"That these trains each carry in addition to interstate passenger and freights in the shape of express matter, the United States mai under a contract with the Government of the United States, and tha by virtue of this contract for carrying the United States mail, com plainant is compelled to maintain certain schedules in order to mak certain and close connections with other important interstate lines principally transcontinental lines and lines of railroad extending out of the United States.

"That in addition to the said fast through trains, it maintains cer tain other trains which afford ample and all necessary and reason able accommodations for all stations along its lines.

"That the town of Magnolia is a town situated on the complain ant's line in the State of Mississippi 98 miles north of the city o New Orleans, and is a place of about twelve hundred inhabitants as shown by the recent census of the United States; that the follow ing passenger trains south bound daily leave the town of Magnolia for the city of New Orleans, to-wit:

"South.

No. 5 leaves Magnolia 5:15 a. m.	Arrives N. O. 7:50 a. m.
No. 31 leaves Magnolia 6:00 a. m.	Arrives N. O. 9:35 a. m.
No. 23 leaves Magnolia 6:56 p. m.	Arrives N. O. 10:20 p. m.

"That——

No. 1 passes Magnolia 8:45 a. m.	Arrives N. O. 11:25 a. m.
No. 3 passes Magnolia 5:20 p. m.	Arrives N. O. 7:55 p. m.

"That compliance with said order will delay said trains numbers one and three, and imperil the ability of the complainants to comply with its contract with the United States mails, and embarrass its interstate traffic; that the said trains numbers one and three make close connections with other lines of railroads at the city of New Orleans, and that the schedules which are adopted for that purpose and which are now maintained are about as fast as can now be maintained under the present condition of complainant's roadbed and equipment.

"That under the contracts with the United States Government for the carrying of mail, it is subject to a penalty for failure to make connections with other lines of railroad to which the mails are to be delivered for further transportation.

"That on the 21st day of April, 1903, the Mississippi Railroad Commission promulgated an order requiring trains numbers one and three to stop on flags at the said town of Magnolia; that
106 in the issuance of this order the said Railroad Commission of the State of Mississippi were acting upon a supposed authority conferred upon it by certain statutes of the State of Mississippi, giving to said Mississippi Railroad Commission the power at its discretion to cause all trains to stop at all county seats, Magnolia being the county seat; that your complainant protested against the issuing of the said order, and showed to the railroad commission that it furnished to the town of Magnolia all reasonable and necessary railroad facilities, and that the effect of this order would be to give to the town of Magnolia greater railroad facilities than are afforded by complainant to any other town in the State of Mississippi, including the city of Jackson, the capitol of the State, excepting only the town of McComb city, which being a relay station on complainant's road, it is necessary for all trains to stop there to change the engine, and for fuel, water, etc.; that the effect of said order would be to give to the town of Magnolia five daily trains to the city of New Orleans running within short intervals of each other;

"That by the statutory law of the State of Mississippi, it is subject to the penalty of $50.00 for each and every time it fails to stop its said trains in obedience to the said order of the railroad commission above set forth. And that the said complainant would be compelled to comply with said order, or to be subject to a multitude of suits for penalties arising from each and every violation of said order, and the said defendants threaten by suit to enforce the observance of said order:

"That the order of the Railroad Commission of the State of Mississippi is a direct burden upon interstate commerce, and therefore a violation of and *and* conflict with section eight of article one of the Constitution of the United States, which provides that Congress shall have power to regulate commerce with foreign nations and among the several States;

"And further, that said order is a direct and unnecessary interference with the speedy carriage of the mails of the United States."

The bill concludes with a prayer for a temporary restraining order, a decree vacating the commission's order, for a permanent injunction, and for general relief.

On the hearing, the court granted a temporary injunction as prayed for. The defendants answered the bill, denying that Magnolia has adequate accommodation for travel south, that the order is unreasonable, that it would embarrass complainant's interstate business or its mail contracts, that the order is a direct burden on interstate commerce or an unnecessary interference with the carriage of the mails. The answer also alleges that the railroad commission is a legally constituted tribunal with full supervising jurisdiction of railroads, and that the order of the commission was legally made, and is valid and enforceable. And it is further alleged that this suit is one against the State, contrary to the eleventh amendment; that the circuit court has no jurisdiction to restrain orders of
107 the commission; and that the injunction should be dissolved on the pleadings and proofs.

The complainant offered the evidence of two witnesses, by whom was proved the allegations of the bill as to the trains numbers one and three; that both trains were made up in Chicago and run to New Orleans for the main purpose of carrying through passengers and the United States mail; that these trains made close connection with other lines of railway along the route, and with the Southern Pacific and other roads at New Orleans. That both were fast mail trains—as fast as they could be safely made; that it was necessary that they should be run as fast as possible to comply with contracts with the Government to carry the mail, and to compete with other lines as carriers of passengers. That these trains stopped only at junction points and important places where there was considerable travel, and at least every fifty miles to get water for the engines. One witness said: "If we stopped our through trains at all stations between Jackson (Miss.) and New Orleans of the size of Magnolia, we would make local trains of them. We would not only lose passenger business, but we would lose the mail contracts, and hurt the towns and country, too. If there were no through service, the people would go to the other lines, to our competitors, and avoid the road." It was shown that Magnolia was served by three passenger trains going south daily that left there and arrived in New Orleans at the times stated in the bill.

The defendants examined three witnesses, by whom it was proved that trains one and three do not stop at Magnolia; that the accommodations on the three passenger trains that stop there daily were not good; that these trains were crowded by local travel, "workmen, dagos" and others; that the trains were not fast; that they stopped at all, or nearly all, stations; that they did not leave Magnolia at times convenient to the citizens, nor did they arrive at New Orleans at times as convenient as numbers one and three.

The three witnesses testified to many circumstances show-
108 ing the difficulty of getting tickets for through travel, and getting baggage checked at Magnolia; that Magnolia has about 1200 inhabitants, and "ships between 11,000 and 14,000 bales of cotton," and 5000 to 6000 tons of seed, and is a thriving and prosperous town where there is much travel. It does not appear from the evidence that the trains that stop there going south are not sufficient for the travel, but the objection or complaint shown by the proof is that the trains are not well equipped, and that they leave at inconvenient times. For example, one witness said: "If a fellow is accustomed to getting up at seven, he didn't like to get up at five." Another said, when asked to give his reasons for wanting numbers one and three to be required to stop,—"In the winter season especially, I am very busy, and always like to make as much time as possible. I do it on account of business and for the comfort there is in the travel. They are better trains than any others, and I believe my business would be facilitated, and I think it would be to the general interest of the town to have them stop." There was no important conflict in the evidence on material points.

The court held the plaintiff not entitled to relief, dissolved the preliminary injunction, and dismissed the bill.

The complainant brings the case here by appeal, and assigned that the court erred in dismissing the bill.

* * * * * * *

Before Pardee, McCormick and Shelby, Circuit Judges.

SHELBY, circuit judge, after making the foregoing statement of the case, delivered the opinion of the court.

We are met at the threshold of the case with the proposition that this suit is forbidden by the eleventh amendment; that it is
109 in effect a suit against a State by a citizen of another State. The Constitution, with its amendments, is construed as one instrument, and the eleventh amendment cannot be applied to nullify the power conferred on Congress to regulate commerce among the several States. It is not a barrier to judicial investigation to ascertain whether other provisions of the Constitution have been disregarded by State action. Prout *v.* Starr, 188 U. S. 537; Reagan *v.* Farmers' L. & T. Co., 154 U. S. 362; Fargo *v.* Hart, 193 U. S. 490.

It is also alleged in the answer that this court has no jurisdiction to enjoin the defendants, because of section 720 of the Revised Statutes, which provides that "the writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State" * * * The railroad commission is not a court within the meaning of section 720. It has been held by the supreme court of Mississippi that the railroad commission of that State is only an administrative agency which exercises quasi judicial powers, and its findings are only "*prima facie* evidence that such decision was right and proper."

W. U. T. Co. *v.* Miss. R. R. Commission, 74 Miss. 80, 92.

The main question in the case relates to the validity of the order made by the railroad commission requiring the fast mail trains from Chicago to New Orleans to stop at Magnolia.

In Cleveland etc. Ry. *vs.* Illinois, 177 U. S. 514, the Supreme Court has collated and briefly commented on the cases showing the police power of the State over the vehicles of interstate commerce. The cases are quoted where State action is held valid which restricts and regulates common carriers, because "in none of these cases was it thought that the regulations were unreasonable or operated in any just sense as a restriction upon interstate commerce." And another series of cases is quoted in which the Supreme Court felt itself constrained to hold State statutes invalid as in conflict with the authority conferred on Congress to regulate commerce among the several States. These decisions show that, while the court fully
110 recognizes the police power of the State as applicable to railroads, no unnecessary interference by State action with commerce among the States is permitted, and the paramount power of Congress is always kept in mind. The point decided in that case (Cleveland &c. Ry. *v.* Illinois, *supra*) is, that a State statute which required all regular passenger trains to stop at county seats was invalid as applied to an express train intended only for through passengers from St. Louis to New York, it appearing that the defendant company furnished four regular passenger trains daily that stopped at all county seats, and that they were sufficient to accommodate the travel. This case would unquestionably be controlling in the case at bar if the three passenger trains which stop at Magnolia going south are found to be sufficient on the evidence. As the railroad commission and the circuit court have made orders which indicate that they are not sufficient, and that the town of Magnolia should have five daily trains going south, we think it well to examine other questions.

The two sections of the Mississippi Code which we have quoted in the statement confer power on the railroad commission to (1) require all passenger trains to stop for passengers at all county seats; (2) to stop such of the passenger and freight trains at any depot as the business and public convenience shall require; (3) to stop trains for passengers to get on and off in a city at any place other than the depot, where it is for the convenience of the traveling public. In Cleveland &c. Ry. Co. *v.* Illinois, *supra*, the State statute in question only required the trains to stop at "county seats," and Mr. Justice Brown observed: "If such passenger trains may be compelled to stop at county seats, it is difficult to see why the legislature may not compel them to stop at every station—a requirement which would be practically destructive of through travel where there were competing lines unhampered by such regulations." It is clear that the Mississippi statutes may be so applied as to present the case suggested by this observation. If these statutes are valid when applied to trains made up and scheduled for rapid interstate
111 travel, then a State legislature has the power to prohibit such travel altogether. The exercise of the full power conferred

by these statutes would paralyze the interstate road for the purposes of rapid travel from one end to the other, for it would be of no use to go fast in one State if delayed in another.

The Supreme Court in the case just cited repeats what it had theretofore held, that railways are bound primarily and adequately to provide for the accommodation of those to whom they are directly tributary, and who have granted to them their franchise, and contributed to their construction. The State unquestionably has ample power to require the complainant company to furnish adequate facilities and accommodations to the town of Magnolia. The citizens of Magnolia have not asked for such relief as could be granted them without interfering with the rights of others. They ask only to have trains numbers one and three to stop. These trains were designed and scheduled for through travel and to comply with Government contracts to carry the mails from Chicago to New Orleans. If the statutes may be applied to stop through trains at Magnolia, they may be stopped at all stations in Mississippi. To require these trains to stop at all at Magnolia seems unnecessary and unreasonable. If the accommodations afforded are not adequate, why single out the through mail trains and seek to convert them into local trains. Why not, under existing statutes, or statutes to be enacted, exert the police power of the State to improve the service by having better equipments on the three passenger trains now in use from Magnolia, and, if they are insufficient, by requiring other trains? The citizens of Magnolia are entitled to sufficient accommodations, and the State has the power to enforce the right; but when such right can be enforced otherwise, it is unreasonable to do so by interfering with the rights of others equally entitled to the protection of the law.

We are of opinion that the order of the railroad commission is invalid, and that the complainant is entitled to relief. The
112 decree of the circuit court is reversed, and the case remanded, with instructions to enter a decree for the complainant.

113 ILLINOIS CENTRAL RAILROAD COMPANY *vs.* MISSISSIPPI RAILROAD COMMISSION ET AL. } No. 1395.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of Mississippi, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby reversed and this cause remanded to said circuit court with instructions to enter a decree for the complainant.

It is further ordered, adjudged and decreed that the appellees, The Mississippi Railroad Commission, and J. C. Kincannon, R. L. Bradley and S. D. McNair, members of said commission, and T. R. Max-

well, clerk of said commission, be condemned to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

April 4, 1905.

114 UNITED STATES OF AMERICA:

In the United States Circuit Court of Appeals, Fifth Circuit, Sitting at New Orleans, La.

ILLINOIS CENTRAL RAILROAD COMPANY *vs.* MISSISSIPPI RAILROAD COMMISSION ET ALS. } No. 1395. Petition for Appeal.

To the honorable judges of the circuit court of appeals of the United States for the fifth circuit, sitting at New Orleans, in the above styled cause, on appeal from the circuit court of the United States for the southern district of Mississippi:

The Mississippi Railroad Commission and the members constituting the same as follows, S. D. McNair, J. C. Kincannon and R. L. Bradley, and T. R. Maxwell, its clerk, defendants in the above styled cause, conceiving themselves aggrieved by the decree made in said circuit court of appeals on April 4th, 1905, in the above entitled cause, whereby the final decree of the circuit court of the United States for the southern district of Mississippi dismissing the bill and dissolving the temporary injunction was reversed, and decree was entered remanding said cause to said circuit court of the United States for the southern district of Mississippi with directions to reinstate the said injunction and to make it perpetual, do hereby petition for an appeal from said decree of the said circuit court of appeals to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and they pray that this appeal may be allowed, and that a transcript of the record, proceedings and papers, including the opinion of this honorable court, in said cause upon which said decree herein was made, duly authenticated, may be sent to the said Supreme Court of the United States, and that the appeal bond, without supersedeas may be fixed by your honors. Petitioners state that the amount involved in this suit exceeds the sum of five thousand dollars, and as in duty bound they will ever pray. This May — 1905.

WILLIAM WILLIAMS,
Attorney General of Mississippi.

115

J. N. FLOWERS,
Assistant Attorney General of Mississippi.
GARNER WYNN GREEN,
MARCELLUS GREEN,
Solicitors of Record for Appellee.

UNITED STATES OF AMERICA, }
State of Mississippi. }

Personally appeared before me, clerk of the supreme court of the State of Mississippi, William Williams, attorney general of Mississippi and attorney of the Mississippi Railroad Commission, who on oath states that the allegations of the foregoing petition for appeal are true.

WM. WILLIAMS.

Sworn to and subscribed before me this 29th day of May, 1905.

GEO. C. MYERS,
Cl'k Sup. Ct.,
By JOS. R. McDOWELL, D. C.

[SEAL.]

The foregoing has the following indorsements, to-wit:
No. 1395. Illinois Central Railroad Company *v.* Mississippi Railroad Commission *et al.* Petition for appeal. Filed 24 day of June, 1905. Charles H. Lednum, clerk of the United States circuit court of appeals.

116 In the United States Circuit Court of Appeals, Fifth Circuit, Sitting at New Orleans, Louisiana.

ILLINOIS CENTRAL RAILROAD COMPANY
v.
MISSISSIPPI RAILROAD COMMISSION ET AL. } No. 1395.

Assignment of Error.

Comes the Mississippi Railroad Commission and S. D. McNair, J. C. Kincannon and R. L. Bradley, sole members of said commission, and T. R. Maxwell, its clerk, defendants in the above styled cause and say that manifest error hath intervened herein to their prejudice in the record and proceedings of the United States circuit court of appeals for the fifth circuit herein, and for errors assigned herein, says, that the decree in said cause rendered by said United States circuit court of appeals, from which an appeal is prayed, is erroneous and against the just right of said defendants for the following reasons:

1. Because the circuit court of appeals, under its opinion herein, was without jurisdiction of the appeal herein, in that, the jurisdiction of the circuit court was invoked on the grounds *both* of diverse citizenship and of a violation of the Federal Constitution, and the Supreme Court of the United States *alone* had jurisdiction of such appeal.

2. Because the court erred in holding that this suit was not a suit against the State of Mississippi, and contrary to the 11th amendment to the Constitution of the United States.

3. Because the court erred in holding that this suit did not violate sec. 720 U. S. Revised Statutes.

4. Because if the circuit court of appeals had jurisdiction of the "whole case," it erred in interpreting the statutes of the State of Mississippi, Code 1892, section 3550: "Every railroad shall
117 cause each and all passenger-trains to stop for passengers at all county seats at which it has a depot, at the discretion of the railroad commission," and section 4302: "Every railroad shall establish and maintain such depots as shall be reasonably necessary for the public convenience, and shall stop such of the passenger and freight trains at any depot as the business and public convenience shall require; and the commission may cause all passenger trains to permit passengers to get on and off in a city at any place other than at the depot, where it is for the convenience of the traveling public. And it shall be unlawful for any railroad to abolish or disuse any depot when once established or to fail to keep up the same and to regularly stop the trains thereat, without the consent of the commission," as violating art. 1, sec. 8, of the Constitution of the United States.

(*a.*) In construing said sec. 4302 with said sec. 3550, and as applying to the power to stop trains at county seats.

(*b.*) In holding that construing said sections 3550 and 4302 together they conferred power on the railroad commission, exercised in the order complained of, to require all passenger trains to stop at all stations, irrespective of the adequacy of the passenger train facilities offered by appellee.

(*c.*) That construed either separately or together said sections 3550 and 4302 violated art. 1, sec. 8 of the Federal Constitution.

(*e.*) In holding that even though, as held on the facts by the railroad commission and the circuit court, the passenger train facilities of appellee at Magnolia, a county seat, were inadequate, that under said sections 3550 and 4302, or either or both of them, said railroad commission had no power to require passenger trains Nos. 1 and 3 to stop at Magnolia on flag; and that such power if granted by said statutes would be in violation of art. 1, sec. 8 of the Federal Constitution, because said trains were designed and scheduled for through travel and to comply with Government contracts to carry mails."

(*f.*) In holding that passenger trains Nos. 1 and 3 "were
118 through passenger trains designed and scheduled for through travel and to comply with Government contracts to carry mails," and as such protected from regulation as to stops by the Constitution and laws of the United States, when by the bill and the uncontradicted evidence it appears that said trains do a local, intrastate passenger business, between stations in Mississippi, which are neither junctions, nor necessary stops for water or fuel.

(*g.*) In holding that the remedy for inadequate passenger train service at Magnolia, a county seat, was through an order of the railroad commission, under statutes enacted or to be enacted, to compel the railroad company to run more and better equipped passen-

ger trains and not in requiring trains Nos. 1 and 3 to stop on flag.

5. Because on the record herein the decree of the circuit court for the southern district of Mississippi should not have been reversed, but the same should have been affirmed.

6. Because on the record herein the temporary injunction should have been dissolved and not made perpetual; and for other errors apparent.

Wherefore, your appellants, defendants in said circuit court of appeals, pray that the said decree be reversed, and that a decree may be directed to be entered dismissing said appeal to said circuit court of appeals for want of jurisdiction of the appeal; or if said circuit court of appeals had jurisdiction of the appeal, then, that said decree of said circuit court be reversed and the appeal therefrom dismissed, because of want of jurisdiction of the circuit court as a Federal court; or, if said circuit court had jurisdiction as a Federal court, and the circuit court of appeals had jurisdiction of the "whole case," then that said decree of said circuit court of appeals be reversed, and the decree of the circuit court dissolving the temporary injunction and dismissing the bill be affirmed, and as in duty bound.

WILLIAM WILLIAMS,
Attorney General of Mississippi.
119 J. N. FLOWERS,
Assistant Attorney General of Mississippi.
GARNER WYNN GREEN,
MARCELLUS GREEN,
Solicitors for Appellants, Appellees in the Circuit Court of Appeals.

* * * * * * *

120–123 In the United States Circuit Court of Appeals, Fifth Circuit, sitting at New Orleans.

ILLINOIS CENTRAL RAILROAD COMPANY
v.
MISSISSIPPI RAILROAD COMMISSION ET AL. } No. 1395.

Order Granting Appeal.

The appellees, in this cause in this court, The Mississippi Railroad Commission, and its sole members, S. D. McNair, J. C. Kincannon and R. L. Bradley, and T. R. Maxwell, its clerk, having prayed an appeal in the Supreme Court of the United States from the decree in this court whereby the decree of the circuit court of the United States for the southern district of Mississippi was reversed and a decree ordered to be entered in said circuit court making perpetual the temporary injunction therein as prayed in the original and amended bills, such appeal is hereby this day allowed, without supersedeas, on the execution by said appellees herein of an appeal bond, condi-

tioned according to law, in the penal sum of one thousand dollars, with at least two good sureties.

Ordered, adjudged and decreed this 31st day of May, 1905.

DON A. PARDEE,
Circuit Judge, Presiding Judge in the United States
Circuit Court of Appeals for the Fifth Circuit.

* * * * * * *

124 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the forgoing 124 pages, numbered from *a* to 123, inclusive, contain a true copy of the record, assignments of error and all proceedings, in the case of The Illinois Central Railroad Company, appellant, *versus* The Mississippi Railroad Commission, *et al.*, appellees, No. 1395, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, Louisiana, this 24th day of June, A. D. 1905.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court
of Appeals for the Fifth Circuit.

125 Citation to the Supreme Court of the United States.

In the Supreme Court of the United States.

UNITED STATES OF AMERICA:

The President of the United States to the Illinois Central Railroad Company:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden in the Capitol in the city of Washington on the 30th day of June 1905 A. D. pursuant to an appeal granted by the circuit court of appeals of the United States for the fifth circuit, wherein The Mississippi Railroad Commission, R. L. Bradley, S. D. McNair and J. C. Kincannon, members of the said commission and T. R. Maxwell, clerk thereof, are appellants and you are the appellees, to show cause, if any you have or can, why the decree rendered against the said appellants as in said appeal and assignment of errors therewith filed, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States this 31st day of May nineteen hundred and five, and of the Independence of the United States of America the one hundred and twenty ninth.

DON A. PARDEE,
Senior Circuit Judge.

We hereby acknowledge service of the foregoing writ for the defendant therein this 18th day of June, 1905.

E. MAYES &
MAYES & LONGSTREET,
Solicitors for Illinois Central Railroad Company.

126 [Endorsed:] No. 1395. Illinois Central Railroad Company *v.* Mississippi Railroad Commission *et al.* Citation and acceptance of service. Filed 24 day of June, 1905. Charles H. Lednum, clerk of the United States circuit court of appeals.

127 In the Supreme Court of the United States.

Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

MISSISSIPPI RAILROAD COMMISSION ET AL., Appellants,
v.
ILLINOIS CENTRAL RAILROAD COMPANY, Appellee. } No. —.

Stipulation as to Printing Record.

It is hereby stipulated between the appellants, by their attorneys, and the appellee, by *their* attorneys, that in printing the record in the above entitled cause the clerk shall omit therefrom the following documents and papers:

1. The subpœna from the circuit court, and its endorsement of service. Printed Rec. pp. 7, 8.
2. Service of the restraining order. Printed Rec. p. 9.
3. Affidavit of O. M. Dunn. Pr. Rec. pp. 13, 14, 15, 16, 17.
4. Affidavit of Hugh V. Wall. Pr. Rec. p. 17.
5. Affidavit of S. Cohn. Pr. Rec. p. 18.
6. Affidavit of Abe Wolfe. Pr. Rec. p. 19.
7. Affidavit of E. W. Reid. Pr. Rec. pp. 20, 21.
8. Affidavit of W. M. Lampton. Pr. Rec. pp. 21, 22, 23.
9. Affidavit of John A. Webb. Pr. Rec. pp. 23, 24.
10. Affidavit of Thad B. Lampton. Pr. Rec. pp. 25, 26.
11. Indorsement on opinion. Pr. Rec. p. 34.
12. Indorsement on decree. Pr. Rec. p. 35
13. Indorsement on motion to dissolve. Pr. Rec. 36.
14. Indorsement on replication. Pr. Rec. p. 40.
15. Indorsement on final decree. Pr. Rec. p. 95.
16. Bond on appeal to U. S. circuit court — appeals. Pr. Rec. 95, 96, and indorsements thereon Pr. Rec. 96.

128 17. Certificate of circuit clerk to transcript on appeal to U. S. circuit court of appeals. Pr. Rec. p. 98.

18. Orders in U. S. cir. court of appeals as to argument of dates January 23rd, 31st, and March 14th, 1905. Rec. p. 102.

19. Names of counsel appearing for either side in circuit court of appeals. Rec. p. 108.

20. Indorsements on petition for appeal from circuit court of appeals to this court. Rec. p. 119.

21. Indorsements on order granting appeal to this court. Rec. p. 120.

22. Bond on this appeal with the indorsements thereon. Rec.

23. The index to printed record in court of appeals. Pr. Rec. I, II.

24. But this agreement is made only to avoid padding the record for the Supreme Court; and if hereafter any party to the appeal shall consider that a proper presentation of his case requires reference to any of the matters herein before agreed to be omitted he may direct such matters to be certified and printed as a supplemental record in and to the Supreme Court, such supplemental records to be considered in all respects as if certified as part of the original.

WILLIAM WILLIAMS,
Attorney General of Mississippi.
J. N. FLOWERS,
Assistant Attorney General of Mississippi.
GARNER WYNN GREEN,
MARCELLUS GREEN,
Attorneys for Appellants.
EDWARD MAYES,
J. C. LONGSTREET,
Attorneys for Appellee.

129 [Endorsed:] File No. 19,821. Supreme Court U. S. October term, 1905 Term No. 319 The Miss. R. R. Com'n *et al.*, appellants, *vs.* The Ills. Central R. R. Company. Stipulation to omit parts of record in printing. Filed July 5, 1905

Endorsed on cover: File No. 19,821. U. S. circuit court of appeals, 5th circuit. Term No. 319. The Mississippi Railroad Commission R. L. Bradley, S. D. McNair, and J. C. Kincannon, members of said commission, and T. R. Maxwell, clerk thereof, appellants, *vs.* The Illinois Central Railroad Company. Filed June 28th, 1905. File No. 19,821.

FILE COPY.

Original

Constitutionality of Statutes of Mississippi Regulating Stoppage of Passenger Trains.

Supreme Court of the United States.

October Term, 1905.

Office Supreme Court U. S.
FILED
SEP 11 1905
JAMES H. McKENNEY,
Clerk.

No. 64

THE MISSISSIPPI RAILROAD COMMISSION, Plaintiffs in Error,

versus

ILLINOIS CENTRAL RAILROAD COMPANY.

Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

Brief for Plaintiffs in Error.

GARNER WYNN GREEN,
MARCELLUS GREEN,
Attorneys for Plaintiffs in Error.

WILLIAM WILLIAMS,
Attorney General.

J. N. FLOWERS,
Ass't. Attorney General of Mississippi,
Of Counsel.

In the Supreme Court of the United States.

October Term, 1905.

No. 319.

MISSISSIPPI RAILROAD COMMISSION, Plaintiffs in Error,

versus

ILLINOIS CENTRAL RAILROAD COMPANY.

Brief for Plaintiffs in Error.

STATEMENT OF CASE.

The Constitution of Mississippi (Const. 1890, Section 186) provides: **"The legislature x x x shall enact laws for the supervision of railroads x x x, by commission or otherwise, and shall provide adequate penalties, to the extent, if necessary for that purpose, of forfeit of their franchises."** By chapter 134, Code 1892, entitled **"Supervision of Common Carriers"** the Legislature created a Railroad Commission as a State office, filled by State election, with official oath and bond, for the supervision of railroads; conferring power to hear and determine the matters confided to its jurisdiction, to administer oaths, issue notices, keep dockets, minutes, etc. Code 1892 Sec. 4284

Chapter 134, Code 1892, **inter alia**, provides:

Section 4284: **"All findings of the Commission and the determination of every matter by it, shall be in writing x x x . x x whenever any matter has been determined by the Commission in the course of any proceeding before it, the fact of such determination duly certified, shall be received in all courts and by every officer in civil cases as prima facie evidence that such determination was right and proper."**

SECTION 4286: **"The Commission may apply to the circuit or chancery court, by proper proceeding, for aid in the enforcement of**

obedience to its process, and to compel compliance with the law and its lawful orders, decisions and determinations; and said courts shall have jurisdiction to grant aid and relief in such cases, subject to the right of appeal to the Supreme Court by the party aggrieved."

These statutes confer no power on the Commission to issue any final process to enforce its orders; it can alone resort to the State Circuit or Chancery Courts, by suit, to compel obedience. (**Telegraph Co. vs. Railroad Commission** 74 Miss. 80; **Railroad Commission vs. Railroad** 78 Miss. 750.)

SECTION 4329: **"If any Railroad x x x shall violate any of the provisions of this chapter x x x or shall fail to comply with any lawful order of the Commission or to conform to any of its reasonable rules and regulations x x x it shall be liable to a penalty of five hundred dollars for every such failure x x x to be recovered by action in the name of the Commission in any county where such failure may occur."**

No cause of action to recover the penalty prescribed is given the Commission, but the person entitled may bring suit **"in the name of the Commission."**

SECTION 4302: **"Necessary depots to be maintained.—Every railroad shall establish and maintain such depots as shall be reasonably necessary for the public convenience, and shall stop such of the passenger and freight trains at any depot as the business and public convenience may require; and the Commission may cause all passengers to get on or off in a city at any place other than at the depot, where it is for the convenience of the travelling public. And it shall be unlawful for any railroad to abolish or disuse any depot when once established, or to fail to keep up the same and to regularly stop the trains thereat, without the consent of the Commission."**

Ch. 112 on **Railroads,** Code 1892, **inter alia,** provides:

SECTION 3550: **"To stop all passenger trains, if etc., at county seats.—Every Railroad shall cause each and all of its passenger trains to stop for passengers at all county seats at which it has a depot, at the discretion of the Railroad Commission."**

The Illinois Central Railroad Company, an Illinois corporation, as lessee of the Chicago, St. Louis & New Orleans Railroad Company, a Mississippi corporation, in conjunction with the Illinois Central Railroad from Chicago, operated its railroad from Cairo, Ill., through Kentucky, Tennessee, Mississippi and Louisiana to New Orleans, under a lease for 400 years.

For many years and to about 4 months before April 21, 1903, the Illinois Central Railroad Company had its south bound passenger train No. 1 stop regularly at 8:45 A. M. at Magnolia, the county site of Pike County, Mississippi, and there had an established depot when it ceased so to do. (R. 50.) Train No. 5 was put on at the time No. 1 ceased to stop (R 56) arriving at Magnolia at 5:15 A. M.

The citizens of Magnolia at April Term, 1903, filed their petition to the Commission praying that south bound passenger trains Nos. 1 and 3, and north bound passenger train No. 4 be required to stop at Magnolia. Notice was duly given and served, and on April 21, 1903, appellee appeared before the Commission and **"protested against the issuing of the said order, and showed to the Railroad Commission that it furnished to the town of Magnolia all reasonable and necessary railroad facilities,"etc. (O. Bill R. 5).**

The Commission, on this hearing, ordered: **"That trains Nos. 1 and 3 be required to stop on flag,"** and that the petition as to No. 4 be denied. (Ex. 1 to O. B. R. 6.). The evidence on this hearing before the Commission was not preserved by bill of exceptions, and was not before the courts below.

Without challenging this order by certiorari, (Code 1892, Secs. 89-90; **Railroad vs. Adams** 38 So. Rep. Miss, 348), and before any suit by the Commission to enforce its order in the State courts could be brought, appellee filed its bill in the circuit court of the United States for the Southern District of Mississippi against said Mississippi Railroad Commission and its members, appellants, averring that "**it is a corporation of the State of Illinois, resident and domiciled in the city of Chicago, and a citizen of the State of Illinois,**" (R. 2); that it was operating an intertsate line of railroad from Chicago to New Orleans; that it was a highway for the accommodation of interstate traffic, established under land grants under the acts of Congress, and for the carriage of the mails; that it was lessee of the Chicago, St. Louis & New Orleans Railroad Company; that **"owing to the exigencies of the interstate business and the requirements of modern commercial and passenger transportation, as well as freight and United States mails, it has been from time to time required to shorten its schedules, and to maintain and operate certain fast through trains intended principally and chiefly for the interstate transportation and interstate commerce. That two of its said trains doing its interstate business are two south bound trains, one designated as No. one, and one as train No. three x x x that these two trains are run expressly for the purposes as aforesaid of carrying on an interstate business, and for the transportation of the United States**

mail; that these trains are run under special schedules for the purpose and of necessity to make close connections with other through trunk lines of railroad doing an interstate business connecting with complainants line of road at New Orleans, x x x and at Chicago x x x and at various intermediate points; that in order to maintain the necessary schedules for the operation of these interstate trains, it is impossible and wholly impracticable to stop at all stations, and further, that these said trains being south bound trains, only stop regularly at junction points and such other points of importance in the State of Mississippi which are necessary and which justify said stops;" (R. 3. NOTE—These two trains "intended primarily and chiefly" for interstate commerce stop "regularly" at junctions "and all such points of importance in the State of Mississippi which are necessary and which justify said stops"). The bill further avers that these two trains each carry in addition to interstate passengers and express freight, the United States mail, under a contract with the United States, and that under this contract complainant "is compelled to maintain certain schedules in order to make certain and close connections with other important interstate lines, principally transcontinental lines and lines of railroad extending out of the United States." That "in addition to the said fast through trains, it maintains certain other trains which afford ample and all necessary and reasonable accommodations for all stations along its line;" that Magnolia is 98 miles north of New Orleans, of about 1200 inhabitants in 1900, with the ~~following~~ passenger train service going south as follows: (R. 4.)

No. 5 leaves Magnolia 5:15 A. M.; arrives at New Orleans 7:55 A. M.

No. 31 leaves Magnolia 6:00 A. M.; arrives at New Orleans 9:35 A. M.

No. 23 leaves Magnolia 6:56 P. M.; arrives at New Orleans 10:20 P. M.

That trains Nos. 1 and 3 make close connections with other lines at New Orleans, and that their schedules are adopted for that purpose; and that these are "about as fast as can be maintained" under present conditions and equipment; that under the United States mail contract it is penalized for failure to make connections; and that compliance with said order will delay said trains and imperil its ability to comply with its contract. That the Mississippi Railroad Commission made said order (Ex. 1) and in issuing said order was acting (R. 4-5) "upon the supposed authority conferred upon it by certain statutes of the State of Mississippi, giving to the said Mississippi Railroad Commission the power at its discretion to cause all trains to stop at county seats, Magnolia being a county seat; that your complainants protested against the issuance of the said order, and showed to the Railroad Commission

that it furnished to the town of Magnolia all reasonable and necessary railroad facilities; the effect of said order would be to give to the town of Magnolia greater railroad facilities than are afforded by complainant to any other town in the State of Mississippi, including Jackson, the Capital x x x excluding only the town of McComb City," which is a relay station for all trains for fuel, water, etc.; that the effect of the said order would be to give to the town of Magnolia five daily trains into the city of New Orleans, running within short intervals of each other. **"That if complainant refuses to obey it will be penalized $50 for every time it fails to stop, etc., and this refusal would involve a multiplicity of suits.**

"Complainants aver that the said order of the said Railroad Commission of the State of Mississippi is a direct burden upon interstate Commerce, and therefore a violation of and in conflict with Section 8 of Article 1 of the Constitution of the United States, x x x and further that the said order is a direct and unnecessary interference with the speedy carriage of the mails of the United States." The prayer is for a restraining order and injunction against the enforcement of said order **by suit or otherwise,** by said Railroad Commission, and for general relief. The bill was signed and sworn to by O. M. Dunn.

(NOTE—The averment is that the **order** was made under the statutes giving the Commission power at its discretion to cause all trains to stop at county seats, and Sec. 3550 is the pertinent statute. No reference is made to Sec. 4302, or to its provisions in the bill. It is not averred that any state statute violates the federal constitution, but only that the **order** predicated on the statutes does so.)

The restraining order as prayed was made; and upon application and motion, the preliminary injunction was granted, upon complainants giving bond, restraining enforcement of the order by the Railroad Commission by **suit** until final hearing (R. 7).

The answer (R. 8-91) denies that Magnolia has adequate accommodations for travel south; denies that the order is unreasonable; denies that it would embarrass complainant's interstate business or its mail contracts; denies that the order is a direct burden, as alleged, upon interstate Commerce, or an unnecessary interference with the carriage of the mails.

By way of matters of law, the answer sets up that, as averred in the bill, the Mississippi Railroad Commission is a legally constituted tribunal, with full supervisory jurisdiction of railroads under the State statutes, and that said order was duly and legally made in the exercise of said statutory powers; and that it is a valid order, and as such is enforceable.

The defendant filed a supplemental answer setting up (R. 19-21) the same grounds as in the motion to dissolve, and upon final hearing moved the Court to dissolve the injunction because:

1. It is a suit against the State, contrary to 11th Amendment to the Constitution of the United States;

2. The injunction was prematurely applied for;

3. The Court **as a court of equity** has no jurisdiction to restrain the enforcement of the order of the Commission as it could only be enforced **by suit** in the State Courts under Code 1892, Sec. 4286;

4. There is no multiplicity of suits, as far as the Commission is concerned, because of penalties incurred;

5. The order complained of does not give rise to a controversy in which the Constitution and laws of the United States are drawn in question by a state statute giving jurisdiction to the court **as a Federal court:** but the sole question is, has there been an abuse of discretion. The statute itself (Sec. 3550) is not by the bill assailed as violative of the federal constitution;

6. The injunction should be dissolved on the pleadings and proofs;

7. There is no equity on the face of the bill.

On final hearing upon proof taken the circuit court did not render a written opinion, but held, as recited in the decree dissolving the injunction and dismissing the bill (R. 69), that the **"order was not an unlawful or unreasonable requirement and that complainant is not entitled to relief."**

The complainants introduced two witnesses, Mr. O. M. Dunn, who swore to the bill, and Mr. McCourt. Neither made the schedules, nor knew of the reasons therefor. (R. 32.)

The evidence shows passenger train service at Magnolia April 21, 1903, to have been trains Nos. 5, 23, 31, as follows:

Train No. 5 (installed when No. 1 ceased to stop at Magnolia R. 56, 38) entered Mississippi **via** Jackson, Tenn., on the main line (R. 40) at 8:00 P. M. (R. 41); passed Jackson, Miss., 2:24 A. M. (R. 40); passed Magnolia 5:37 A. M. (R. 40); arrived at New Orleans 7:50 A. M.; it ran as local north of McComb City, Miss. (R. 78). It traverses Mississippi about 200 miles wholly by night. (R. 41). From March 28, 1903, until two weeks before trial (R. 47) and when this order was made; and until the matter was called to Mr. Dunn's attention by the United States mail Inspector (R. 43), there was no agent at

Magnolia at night to sell tickets or check or put on baggage aboard for No. 5 (R. 60-61), and travellers had to leave their baggage behind.

Train No. 23 was a local passenger train, without sleepers, passing Jackson, Miss., at 3:45 P. M.; and Magnolia at 6:56 P. M.; arriving at New Orleans at 10:20 P. M.; it was nearly always behind time, and to such an extent as not to be relied on, arriving in New Orleans often after 1 A. M., and giving very poor service. (R. 59). After this order No. 23 was abandoned, and 33 was substituted. It arrives at Jackson, Miss., at 10:00 A. M., and remains there until 4:00 P. M., and then goes south, and is due to arrive at Magnolia and New Orleans as on the former time of No. 23. (R. 39.)

Train No. 31 starts, without northern connection, from McComb seven miles north of Magnolia at 5:45 A. M., and is due to arrive at Magnolia 6:00 A. M., and at New Orleans 9:35 P. M.; it is a way station train, of poor accommodations, and is not patronized by the better class of people. It is not run for any connection. (R. 41.)

A passenger north of Jackson, Mississippi, in Mississippi, destined for Magnolia, except at stations where Nos. 1 and 3 stop, would have to be all night on No. 5; or, leaving home, if from north Mississippi, before day and come to Jackson on No. 33 and lay over there all day from 10:00 A. M. to 4:00 P. M., and arrive at Magnolia at 6:00 P. M. Or, if from one of the stations in Mississippi where Nos. 1 and 3 stopped, he would have to go to McComb City, seven miles from Magnolia, and there get off; if on No. 1 at 8:15 A. M., and lay there until 6:00 P. M., to take No. 23 or 33; or, if No. 3, he would have to get off at McComb City at about 5:15 P. M., and wait until about 6:00 P. M. for No. 23 or 33. A south bound passenger travelling on a sleeping car could not get into Magnolia except on No. 5, which does not run via Memphis, but on the main line from Fulton, Ky., via Jackson, Tenn ; and then he would be due to arrive at 5:15 A. M., which for a part of the year is before day break. He could leave Magnolia on a train carrying sleeping cars only by No. 5, and at this early hour.

Train No. 1 had for many years been the first class train for the service of Magnolia, and, contrary to said Section 4302, had ceased to stop **"without the consent of the Commission."** It left Chicago 10:00 A. M. (R. 52), passed Jackson, Miss., at 6:30 A. M., and was due in New Orleans at 11:15 A. M. (R. 55). It left Chicago at the time of trial at 8:25 A. M. (R. 52); arrived at Jackson at 5:15 A. M., and was due in New Orleans at 10:25 A. M.; making a lengthening of the running time between Jackson and New Orleans of five minutes (R. 34). Mr. Dunn did not know why No. 1 could not have started from Chicago at 8:25 as well as at 10:00 A. M. (R. 32); its time has been made slower

(R. 34). The tracks from Jackson, Miss., to Magnolia were doubled in April, 1903 (R. 34), and No. 1 made connection at New Orleans (or Harahan, 8 miles out) with the Southern Pacific Railroad, but had no connection for passengers with the Louisville and Nashville (R. 36, 25). No. 1 takes all local business offered between the places in Mississippi at which it stops (R. 32). No. 1 stops in Mississippi regularly at Sardis, for water; at Grenada, for main line connection; at Winona, junction; at Durant, junction; at Canton, Division Terminal; at Jackson, junction; at Crystal Springs, for water; at Hazlehurst, says Mr. Dunn: **"there is no special reason for that stop at Hazlehurst, except that it is an important town, big business place, also county seat. We stop at Wesson because there is a large amount of business done there x x and at Brookhaven for the same reason"**; at McComb, Division Terminal; at Hammond, La. (R. 27); and at Summit, Miss. (R. 32), and at Vaiden, Miss., on flag (R. 47).

Train No. 3 was a first class train made up in Chicago for New Orleans. When this suit was filed, it arrived at Jackson, Miss., at 2:57 P. M., passed Magnolia at 5:20 P. M., and was due to arrive in New Orleans at 7:55 (R. 34), one hour and five minutes before the Southern Pacific train left. At the time of trial it left Jackson at 3:30 P. M., and was due to arrive in New Orleans at 8:30 P. M., thirty minutes before the Southern Pacific train left, (R. 35) with an increase of the running time between Jackson, Miss., and New Orleans of two minutes (R. 35).

The Illinois Central No. 3 arrived at New Orleans at 7:55 P. M., and the Louisville and Nashville left at 8:15 when the order was made (R. 25); but at time of trial No. 3 arrived at 8:30 P. M., and it does not appear when the Louisville and Nashville left. At date of order Mr. Dunn testified that No. 3 stopped south of Memphis: at Sardis (county seat)for water; at Grenada, for connection with main line from Jackson, Tenn.; at Winona, a junction with the Southern; at Durant, the junction with Aberdeen Branch; at Canton, a Division Terminal; at Jackson, a junction with Y. & M. V. and A. & V. and G. & S. I. railroads; at Crystal Springs, for water; at Hazlehurst (no reason assigned); at Brookhaven (no reason assigned); at McComb City, a District Terminal, and at Hammond, La., for water (R. 27). On cross examination he said that No. 3 stops on Saturdays on signal at Summit for passengers to New Orleans, and at Wesson for passengers from Jackson or from north of Jackson (R. 38, 9). That since the order it stops at Vaiden, Miss., to let passengers from the North off, and, by request of the Commission, the Company agreed to stop there on flag for passengers for Jackson, New Orleans and other stations where

No. 3 stopped (R. 68). No. 3 stopped often at Magnolia to let Mr. Price, the Company's Attorney there, on or off; and for its Agent, and for Mr. Miller, its Attorney (R. 63). For defendant the testimony showed that No. 3 stopped at Canton, Jackson, Crystal Springs, Hazlehurst, Wesson, Brookhaven, McComb City. That the census of 1900 shows the population of Vaiden to be 474; Magnolia, 1038; Summit, 1499; Hazlehurst, 1579; Crystal Springs, 1093; that there had been large manufacturing improvements and a large increase of population in Magnolia since 1900 (R. 52).

Mr. Dunn testified that the water had failed at Crystal Springs necessitating extra stops elsewhere, but that Nos. 1 and 3 continued to stop regularly at Crystal Springs (R. 33). No. 3 did local business between all points in Mississippi at which it stopped (R. 46).

The business importance of several places in Mississippi was made by Mr. Dunn the criterion for stopping (R. 27), and while he stated what he thought the population of these places would be, he referred to the census as a basis, and that was shown to be as stated, **supra.** Ticket sales were also referred to by Mr. Dunn as a basis of relative importance to justify stops and as a standard; but only local tickets —not even commutation books—were kept on sale at Magnolia (R. 48).

There was no evidence that these trains were run under these schedules to carry out contracts with the United States for carrying mails. The only witness speaking to this was Mr. Dunn, who said, as he understands, No. 1 was put on in 1890 under an agreement with the United States to carry fast mails, (R. 23), and until about April, 1903, No. 1 had stopped regularly at Magnolia. The answer in setting forth the contention of appellee, through Mr. Dunn, before the Railroad Commission, does not aver that it was there pretended that the Company could not by reason of time make this stop without interfering with its interstate commerce. Its sole contention there was that it furnished Magnolia with adequate passenger facilities. The Commission found that Magnolia did not have adequate south-bound passenger facilities, and that trains Nos. 1 and 3 should stop on flag. The circuit court on final hearing found that the order was **"not unlawful nor unreasonable."**

The appellee then appealed to the United States Circuit Court of appeals for the Fifth Circuit, and there, without reversing the decree on the facts, the Court held:

1. That this suit was not forbidden by the Eleventh Amendment as a suit against the State;

2. That the Court as a Federal Court had jurisdiction of this suit to enjoin the Railroad Commission from bringing suit in the State

Court to enforce its order, and that it was not forbidden by Section 720, Rev. Stat.;

3. That said Sections 3550 and 4302 construed together confer power on the Railroad Commission to require all passenger trains to stop at all stations in Mississippi, and when applied to trains Nos. 1 and 3, which "**were designed and scheduled for through travel and to comply with Government contracts to carry mails from Chicago to New Orleans,**" are an unlawful restraint upon interstate commerce. "**If the accommodations afforded are not adequate,**" says the Court, "**why single out the through mail trains and seek to convert them into local trains. Why not, under existing statutes or statutes to be enacted, exert the police power of the State to improve the service by having better equippment on the three passenger trains now in use from Magnolia; and, if they are insufficient, by requiring other trains?**" (R. 79).

From the decree reversing the decree and directing the Circuit Court to issue a perpetual injunction restraining the Commission from bringing suit in the proper state Court to enforce said order an appeal was taken to this court.

BRIEF.

First Assignment.

1. The Circuit Court of Appeals, under its opinion, was without jurisdiction of the appeal.

(a). The opinion is predicated upon diverse citizenship **and** that said sections 3550 and 4302, Code 1892, when applied to trains Nos. 1 and 3 violated the Federal Constitution, Sec. 8, Art. 1; and in such case this court **alone** had jurisdiction. **Field v. Barber Asphalt Co.,** 194 U. S., 618.

Second Assignment.

1. The Circuit Court, **as a federal court,** was without jurisdiction of this suit.

(a). Because it is a suit against the State of Mississippi, contrary to the Eleventh Amendment.

The Mississippi Railroad Commission is composed of State officers duly elected and qualified, and vested solely and exclusively with the execution of the police powers of the State created by statutes in the matter of supervision of railroads. It is the sole agency of the State, charged by law, with the duties of making inquiry into the performance, **vel non,** by common carriers of police statutes in that regard, and of

finding the facts, and of enforcing, **by suit. in its own name,** in the proper State Courts, its own orders predicated upon said statutory powers.

If, as claimed, the statutes of the state under which the Commission made its order were claimed to be unconstitutional, as the sole remedy by the State was **by suit by the Commission** to enforce the order, the federal court could not restrain the suit.

"As a State can act only by its officers, an order restraining any steps, by means of judicial proceedings, in execution of the statute of February 9, 1895, is one which restrains the State itself, and the suit is consequently as much against the State as if the State was named as a party defendant on the record. x x x There is a wide difference between a suit against individuals, holding official position under the State, to prevent them, under the sanction of an unconstitutional statute, from committing some private act, a wrong or trespass, and a suit against officers of the State merely to test the constitutionality of a state statute, in the enforcement of which these officers will act only by formal judicial proceedings in the courts of the State. x x x The citizen is not without effective remedy, where proceeded against under legislative enactment void for repugnancy to the supreme law of the land; for whatever the form of proceeding against him, he can make his defense on the ground that the statute is unconstitutional and void." **Fitts vs. McGee,** 172 U. S., 527-8; **In re Ayers,** 123 U. S., 497; **Smith vs. Reeves,** 178 U. S., 436.

If the state statutes were unconstitutional the federal court could not restrain the suit. **Harkrader vs. Wadley,** 172 U. S., 169; **McWhorter vs. Railroad,** 2 L. R. A., 504; **Prout vs. Starr,** 188 U. S., 537, cited in the opinion, was the consummation of **Smyth vs. Ames,** 169 U. S., 466, and belongs to that class of cases where the threatened act is an injury to property; as, also, does **Reagan vs. Trust Co.,** 154 U. S., 362.

(b). There is no complaint in the bill that the state statutes are unconstitutional; the complaint is that the **order** violates the constitution. The assignment of error in the court of appeals only complains of the **order.**

A suit against an officer of a state to enjoin him from instituting suits to enforce the police power under a state statute, which, if properly construed, is conceded to be valid, and with the enforcement of which he is charged by law, on the ground that he is proceeding under an erroneous interpretation of the law and in violation of the Federal Constitution, is a suit, in effect, against the State, and of which the Federal Court is denied jurisdiction by the Eleventh Amendment. **Arbuckle vs. Blackburn,** 113 Fed. 616; s. c. 191 U. S., 405.

Third Assignment.

1. The court **as a federal court** was prohibited from issuing this injunction by Sec. 720, U. S. Rev. Stats.

(a). The **"proceedings"** in the State Court were commenced before the Commission by petition by citizens of Magnolia, and after hearing before the Commission, and its order made to stop, the next step for the Commission to compel obedience (it having no power to issue final process) would be to petition the proper State court, under Section 4286, by proper proceeding, for **aid "in the enforcement of obedience to its process, and to compel compliance with x x x its lawful orders x x x and such courts shall have jurisdiction to grant aid and relief in such cases."** The application to the proper court by the Commission for mandamus or mandatory injunction **constitutes the final process of the proceedings. 2 Elliot on Railroads,** Sec. 698.

This Section 4286 does not create a new jurisdiction in equity but is directory to the Commission to make effective its orders. **Railroad Commission vs. Railroad,** 78 Miss., 760.

The jurisdiction to make the order continues until it is enforced by performance or by final process. **Wagman vs. Southard,** 10 Wheat. 1; **Leathe vs. Thomas,** 97 Fed., 138-9. Mandamus to compel performance is predicable upon and referrable to the jurisdiction to render the judgment; and under Sec. 720 that jurisdiction controls as having already attached. **Riggs vs. Johnson,** 6 Wall, 166. The opinion cites **Telegraph Co. vs. Commission,** 74 Miss., 80-92, correctly as holding that the Commission is an administrative agency of the State with **quasi** judicial powers, and that its findings are by virtue of Sec. 4284 only **prima facie** evidence. But the exercise of this judicial power results in a judgment which is **prima facie** valid, and is enforceable by the aid of the courts only by suit, and after the rendition and before the State, through this agency, can act to make effective this judgment, it is not competent for the federal jurisdiction to intervene, and to enjoin the enforcement of the judgment by the only means provided by law for final process.

Fourth Assignment.

1. The Court erred in construing said Section 4302 with said Section 3550; and in holding that, jointly or severally, they violated Article 1, Sec. 8 of the Federal Constitution; and in holding that said trains Nos. 1 and 3 came within the purview of said Commerce Clause; and because thereof that said order was invalid. The subdivisions (a) to (g) inclusive under this assignment, will, to avoid prolixity, be considered together.

The bill was framed solely upon Section 3550, and it averred that in the issuance of the order the Commission "**were acting upon a supposed authority conferred upon it by certain statutes x x x giving to the Mississippi Railroad Commission the power at its discretion to cause all trains to stop at County seats, Magnolia being the County seat.**" (R. 4-5).

County seats as places requiring stops occupy peculiarly a class to themselves. (**Ill. Cen. R. R. Co. vs. People,** 19 L. R. A., 125-6).

The court below has read these two sections together, and from their interpolation has concluded that they taken together violated the Federal Constitution. If Section 3550 standing alone was valid, it could not be destroyed by reading into it another Section of another Chapter of the Code (Section 4302), upon a different aspect of the subject matter. Section 3550 pertains **alone** to County seats. It does not require any particular number of trains to stop, it leaves the number—it may be **"each and all"**—according to the discretion of the Commission. The legislature confers police power on the Commission, in **its discretion,** to consider conditions, and to judicially determine what trains shall so stop. This discretion must be the exercise of a **legal** discretion (**Sutherland Stat. Constr.,** Sec. 333). If the Railroad Company had provided, by less than all of its trains, primarily and adequately for the accommodation of those to whom they are directly tributory (**Cleveland & R. Co. vs. Illinois,** 177 U. S., 514, 521), then in the exercise of this **legal** discretion the Commission would not be presumed to have authority to interfere with special, through trains devoted exclusively to interstate commerce. The legislative intent would not extend to a violation of the Federal Constitution by thus having the application of the statute to depend upon **"a legal discretion to be exercised in discerning the course prescribed by law." Tripp vs. Cook,** 26 Wend., 291.

This Section presupposes that a depot has already been established by the Railroad Company; the condition of the exercise of the power to compel the stop being **"at which it has a depot."** No power is conferred by this section upon the Commission to establish a depot. So far as the establishment of depots by orders of the Commission is concerned, that is provided by Sec. 4311, Code 1892, and they may be required, after hearing, according as **"the public convenience may warrant."** Every reasonable presumption must be indulged in interpretation to avoid imputing to the legislature an intent to violate the Constitution. (Cooley Const. Lim., 7th Ed., 255.) Section 3550 is fully within the rules laid down in **Ill. Cen. R. R. Co. vs. Ill.,** 163 U. S., 142; **Cleveland Ry. Co. vs. Ill.,** 177 U. S., 514; **Lake Shore R. Co. vs.**

Ohio, 173 U. S., 285; **Gladson vs. Minn.,** 166 U. S., 427. The Illinois **statute required all trains to stop** at all county seats. The Ohio statute required three trains to stop. To stop each and all passenger trains at county seats according to the discretion of a **quasi** judicial Commission differs widely from the legislative mandate that all trains must stop. Sound legal discretion would control, and if the discretion was abused, the fault would not lie with the statute creating the discretionary power but with the exercise of the discretion itself. The legislative intent was clearly that the statute itself should not furnish the measure of adequate facilities, but that these should be determinable by the facts of each particular case and according to law. Sound legal discretion might require that all trains must stop. The nature and number of the trains, the condition of service, etc., would be determinative.

Section 4302 standing alone, or in correlation with Section 3550, is free from constitutional objection.

Construing the first part of paragraph one of said Section 4302. It was a proper exercise of the police power to require railroads to establish and maintain **"such depots as shall be reasonably necessary for the public convenience,"** and such duty would be imposed by its charter as a part of its construction as a railroad. **(3 Elliott Railroads,** Sec. 1056). The establishment of depots is foreign to the case here, as Magnolia was and continued to be a depot. The next part of paragraph one provides: **"Every railroad x x x shall stop such of the passenger and freight trains at any depot as the business andpublic convenience shall require."** This does not pertain to the same aspect of the subject matter as does Section 3550. There, the stops of passenger trains at County seats was in the legislative mind. Here, the general stopping of both passenger and freight trains at depots, generally, is being considered. The former is special and particular, and at the discretion of the Commission; the latter is general, and withont reference to that discretion. Here, the requirement is **legislative;** and it is not that passenger and freight trains shall all stop at all depots; but, only that they shall stop **"at any depot as the business and public convenience shall require."** This only declares that **"all local conditions"** must **"have been adequately met." (Cleveland etc Ry. Co. vs. Ill.,** 177 U. S., 514-521). What **"the business and public convenience shall require"** is a relative expression, and it comes within the requirements of the rule in **Cleveland Ry. Co. vs. Ill., supra,** that railways are bound to **"provide primarily and adequately for the accommodation of those to whom they are tributary, and who have not only granted them their franchise but who may have contributed largely to the con-**

struction of the road." There is no definition by this section of the rule as to stops **after** a sufficient number of trains shall have stopped to meet the requirements of **"business and public convenience."** This **statute** does not define the character or the measure of **"business and public convenience"** to require a stop. Such language could not be made a mandatory restraint upon interstate commerce, nor could its interpretation bring it necessarily in conflict with the Federal Constitution.

The sole reference to the Commission in this Section is that it may allow **"for the convenience of the travelling public"** passengers to get off trains in towns other than at the depot. This and the last provision have no relevancy to this question.

These two sections if construed together do not mean that all through trains, irrespective of the adequacy of other passenger facilities, must stop at all stations. True the statute confers the power upon the Commission to require all trains to stop at county seats. This discretionary power is to be exercised according to conditions and according to law. If adequate facilities are otherwise provided it would be an abuse of discretion and of power to so require, and thereby the statute itself would be violated. When treating of the general subject as applicable to all trains, stopping at all stations, Sec. 4302 only requires such stops at any depot to be such as the business and public convenience may require. In Sec. 4302 is found expression of the general legislative purpose as to stops. And this should be interpreted as the common intent of both sections if and when construed together. Under both sections every train may be required to stop, if necessary to furnish adequate facilities. The difference between them is that under Section 4302 the statute itself requires the stop if the **"business and the public convenience shall require:"** while under Section 3550 the conditions of fact and of law requiring stops at county seats are to be judicially ascertained by the Commission, and when ascertained, if justifying the stops, they may be required.

The underlying error of the opinion of the court below is that it fails to give effect to the proposition that the **primary** duty of the railroad Company is to furnish adequate facilities to each station; and that it is only **after this primary duty has been adequately performed** that the railroad company is freed of the obligation to stop all of its trains, and is permitted to provide **"special"** trains for the special purpose of interstate traffic. Primarily all trains are for the whole of the public, local and interstate. Special privileges for the special class of interstate passengers can only be given when so to do does not interfere with the rights of the public as a whole.

The court below did not disturb the finding of the Commission and of the Circuit Court that the passenger facilities of Magnolia were inadequate; but, conceding such to be the case, held that the remedy of the state was not to disutrb trains designed for through travel, but under statutes enacted or to be enacted to compel the Company to run more trains. The state through its Commission would find it difficult, under statutes, enacted or to be enacted, to control the administration of the operation of the railroad; to prescribe the trains that should be run; to make their schedules; etc. Nor should the court in making application of the Commerce Clause of the Constitution, in order to have adequate facilities provided, require other conditions to be made than those actually provided by the Company. The Commission and the Court had a status created and maintained by the acts of the railroad Company. They could deal with this status alone. The state complains that this status so provided by the railroad Company does not provide adequate facilities at this particular town for the public, and establishes that fact, and orders that the present trains be so run as to afford the required facilities. It is no answer to this to say that other statutes might be enacted, or that other devices might be resorted to, to attain this same result. The present instrumentalities should be so used that adequate facilities should be afforded. The court must deal with existent conditions—not with those that might be. The Commission would hardly be justified in ordering two additional trains to be run to afford facilities to one place or, that local trains, designed for local, way service, should be equipped in the form of first-class trains. The service along the whole line is not complained of. The order is confined to these two trains Nos. 1 and 3, on flag, and at this particular county seat.

The finding of the Commission and of the Circuit Court, undisturbed by the Court of Appeals, that the facilities were inadequate is conclusive. **Schwartz vs. Duss,** 187 U. S., 10; s. c. 103 Fed., 561; **Murphy vs. So. Ry. Co.,** 115 Fed., 257. The evidence, **supra,** shows that Magnolia did not have adequate facilities, and that said finding was correct.

The court below erred in applying these provisions of the Federal Constitution to these trains Nos. 1 and 3, because they did a local, ~~inter~~state business, and hence were not subject to the Commerce Clause. The evidence on this point is undisputed. The bill itself avers that these fast trains were **"intended *primarily* and *chiefly*, for the interstate transportation and interstate commerce. x x that these said trains being south bound trains only stopped regularly at junction points and all such other *points of importance* in the State of Mississippi and *which justify said stops.*"** (R. 3.) (Italics ours.) Mr. Dunn justified the

regular stops at Wesson, Hazlehurst and Brookhaven on the ground of business importance. These trains, also, stopped at Summit on Saturday on flag, and, after this order was made, at Vaiden. They also stopped at Amite, La., on flag. It requires only three minutes to make a stop. At all of these stops in Mississippi they did intrastate, local business. If these trains were intended as trains engaged in interstate commerce only there has been in practice a departure from this intention by doing this local business in Mississippi at such **"points of importance" "as justify said stops."** While if engaged wholly in interstate commerce they might be protected by the Sec. 8, Art. 1, **"the company cannot complain of being taxed for the privilege of doing a local business which it is free to renounce." Pullman Palace Car Co. vs. Adams,** 189 U. S., 422. No one familiar with the reasons for making these schedules was introduced as a witness. Mr. Dunn admitted that he was not a party to making them (R. 32). There was no evidence that the time could not be lengthened by an earlier start, or otherwise, sufficiently to cover the stop at this particular place. The averment that these trains were run as fast as they could reasonably be to make connections with other railroads was shown to be untrue: the difference in time for the Southern Pacific connection when the order was made was one hour and ~~thirty~~ minutes, and this was afterwards reduced to thirty minutes. The appellee did not run for any connection with the Louisville & Nashville. These are the only two roads with which any pretense of connection was claimed in the evidence; no Chicago connection was shown. The pretense of the schedule being required by the Government contract for carrying the mails was shown to have no application, and Mr. Dunn merely claimed that he **understands** that in 1890 this schedule was put on under an agreement with the United States.

Fifth Assignment.

1. The sole ground for the reversal of the decree by the court below being that the statutes are unconstitutional, if such was not the case, no reason exists why a federal court as a court of equity should enjoin these regular proceedings in another tribunal of competent jurisdiction. **Defiance Water Co. vs. Defiance,** 191 U. S., 184, 193; **United States vs. Parkhurst Davis Co.,** 176 U. S., 320.

Sixth Assignment.

The grounds of this assignment have been considered, **supra.**

Wherefore the decree of the Court of Appeals should be reversed, and the appeal to that Court should be dismissed for want of jurisdiction

and the decree of the Circuit Court should be reinstated; or, if the Court of Appeals had jurisdiction of the appeal then that its decree be reversed and the decree of the Circuit Court be affirmed.

GARNER WYNN GREEN,
MARCELLUS GREEN,
ATTORNEYS FOR PLAINTIFFS IN ERROR.

WILLIAM WILLIAMS,
ATTORNEY GENERAL,

J. N. FLOWERS,
ASS'T. ATT'Y. GENERAL,
OF THE STATE OF MISSISSIPPI, OF COUNSEL.

FILE COPY.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

No. [redacted].64

MISSISSIPPI RAILROAD COMMISSION,
Plaintiff in Error,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY,
Defendant in Error.

64

BRIEF FOR DEFENDANT IN ERROR.

EDWARD MAYES,
J. M. DICKINSON,
Attorneys for Defendant in Error.

THE GUNTHORP-WARREN PRINTING CO., 116 RANDOLPH STREET, CHICAGO

Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 319.

MISSISSIPPI RAILROAD COMMISSION,
Plaintiff in Error,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY,
Defendant in Error.

BRIEF FOR DEFENDANTS IN ERROR.

Not being fully satisfied with the Statement of the Case made by the plaintiffs in error in their brief. we shall venture to make another here. We respectfully submit that the statement presented by plaintiff in error is in many particulars, unintentionally no doubt, erroneous, and fails to present correct interpretations of the law and of the evidence, some of which failures will be hereafter pointed out in the course of our argument.

STATEMENT OF THE CASE.

There is in the State of Mississippi a Railroad Commission consisting of three members, whose duty it is, in a general way, to supervise the operations of common carriers. The power and authority of that commission are set forth in Chapter 134 of the Annotated Code of Mississippi of 1892.

There is also in the same code a chapter, being 112, on the general subject of railroads.

In Chapter 112 on "Railroads," Section 3550 is as follows:

"3550. *To stop all passenger-trains, if, etc., at county seats.*—Every railroad shall cause each and all of its passenger-trains to stop for passengers at all county seats at which it has a depot, at the discretion of the railroad commission."

In Chapter 134, on the subject of "Supervision of Common Carriers," Section 4302 is as follows:

"*Necessary depots to be maintained.*—Every railroad shall establish and maintain such depots as shall be reasonably necessary for the public convenience, and shall stop such of the passenger and freight trains at any depot as the business and public convenience shall require; and the Commission may cause all passenger trains to permit passengers to get on and off in a city at any place other than at the depot where it is for the convenience of the travelling public. And it shall be unlawful for any railroad to abolish or disuse any depot when once established or to fail to keep up the same and to regularly stop the trains thereat, without the consent of the Commission."

The two foregoing sections are the controlling statutes in this case. They must be read together. They

are *in pari materia;* so manifestly, it will be observed, that Section 3550 expressly refers the subject matter of its enactment to "the discretion of the Railroad Commission," although it is in the chapter on "Railroads." Taking the two sections together, their clear meaning is that,

(1) The commission may compel a railroad company "to stop such passenger and freight trains at any depot as the business and public convenience may require (Section 4302); and that

(2) For the reason *alone* that a station is at a county seat, the commission may, in its discretion, compel all the passenger trains to stop there.

The defendant in error is a railroad company chartered by the State of Illinois; and by written leases made in the year 1882 with the Chicago, St. Louis & New Orleans Railroad Company, and with the Mississippi Division line (that is, the Miss. and Tenn. R. R. Co.) made in 1887, being ordinary railroad leases for four hundred years from date, was holding and operating the said line of railroad from Cairo, Illinois, to New Orleans, Louisiana. (Rec., 69 and 70.)

In addition to the ordinary local trains running from north to south on the Illinois Central, there were two certain trains, denominated No. One and No. Three, which were made up in Chicago and ran through to New Orleans for the special accommodation of through passengers and mails, running on agreed time with the government. These trains stopped only at junction points, and important places where there was considerable travel, and at places where it was necessary to get water for the engines. (Rec., 23, 24 and 76.)

They did not stop at Magnolia, which is the county

seat of Pike County, Mississippi, and is one of the stations on the line of the Illinois Central, about 98 miles north of the City of New Orleans, and which by the census of 1900 had a population of 1,038. (Rec., 52, 74.)

In April, 1903, 68 citizens of Magnolia presented a petition to the Mississippi Railroad Commission as follows (Rec., 64):

"We, the undersigned citizens of the Town of Magnolia, respectfully petition your honorable body to issue an order making Magnolia a regular stop for passenger trains—one, three and four. Magnolia being one of the most progressive towns in the state, and the county site of this county, we believe that we are entitled to have these trains make regular stops here. We believe it will be for the best interest of the public, as well as for our town, that your honorable body issue an order requiring the above passenger trains one, three and four to make regular stops here."

Based on the foregoing petition, the commission on April 21, 1903, made the following order (Rec., 67):

"April 21st, 1903.

"In the Matter of the Citizens of Magnolia, Miss., *vs.* The Illinois Central Railroad Company: Praying this Commission to order the said Illinois Central Railroad Company to make Magnolia, Miss., a regular stop for trains Nos. One, Three and Four (1, 3, 4) the same having come on to be heard, the complainants being present and heard and the defendant, the I. C. R. R. Co., by its assistant Genl. superintendent (O. M. Dunn) being also present and heard, it was ordered that the prayer of the petitioners be granted in part as follows, viz.: The trains Nos. One, Three be required to stop on flag, and to be effective on and after the 1st day of May, 1903, that in so far as the petition refers to Number Four, the same is denied."

Thereupon the Railroad Company exhibited in the Circuit Court its bill for injunction against the Railroad Commission and the members of the same, with an

amendment thereto, which bill and amendment, set up in brief, the following facts:

That complainant's railroad was an interstate line, extending from New Orleans to the Great Lakes, and is a national highway, for the accommodation of interstate commerce and the United States mails, and has been recognized and promoted as such in various acts of Congress described in the bill; that owing to the exigencies of its interstate business and the requirements of modern commerce and passenger transportation and that of the mails, it has been from time to time required to shorten its schedules and to maintain and operate certain trains intended primarily and chiefly for interstate transportation and commerce; that trains numbered One and Three were two of such trains, and are run expressly for the purpose of carrying on an interstate business and transporting the mails, and are run under special schedules for the purpose and necessity of making close connections with other through trunk-lines of railroad doing an interstate business, connecting with complainant's line of road at New Orleans, and at Chicago and at various intermediate points; that in order to maintain these schedules it is impossible and wholly impracticable to stop at all stations, and that the south-bound trains only stop regularly at junction points and such points of importance in the State of Mississippi which are necessary and which justify such stops; that these two trains each, besides carrying interstate passengers and express matter, carry the United States mails under contracts with the government by which complainant is compelled to maintain certain schedules in order to make certain and close connections with other important interstate lines, prin-

cipally trans-continental lines and lines of railroad extending out of the United States; that in addition to the said fast through trains, complainant maintains certain other trains which afford ample and all necessary and reasonable accommodations for all stations along its lines; that Magnolia, situated on complainant's line in Mississippi, is ninety-eight miles north of New Orleans, and is a place of about 1200 inhabitants, as shown by the census, and that the following passenger trains, south-bound, duly leave that town for New Orleans, to-wit: Number Five leaves Magnolia at 5:15 a. m., arriving in New Orleans at 7:55 a. m.; Number Thirty-one leaves Magnolia at 6 a. m., arriving in New Orleans at 9:35 a. m.; Number Twenty-three leaves Magnolia at 6:56 p. m., arriving in New Orleans at 10:20 p. m.; that Number One, the fast mail above mentioned, passes Magnolia at 8:45 a. m., south bound, reaching New Orleans at 11:25 a. m.; and Number Three, the limited above mentioned, passes Magnolia at 5:20 p. m., reaching New Orleans at 7:55 p. m.; and that compliance with the order of said Commission would delay said trains, and would imperil the ability of complainant to comply with its mail contracts, and would embarrass its interstate traffic; that the schedules which were now maintained for those trains were about as fast as could be maintained under the present condition of complainant's roadbed and equipment, and that under the contracts with the United States government, complainant was subject to a penalty for failure to make connections with other lines of railroad to which the mails are to be delivered; that the town of Magnolia was by the three local trains aforesaid, afforded all the reasonable and necessary railroad facili-

ties, and that the effect of the order made by the commission would be to afford it greater railroad facilities than are afforded to any other town in the State of Mississippi, excepting only McComb City, which is a relay station, and at which it is necessary for all trains to stop in order to exchange engines, etc.; that the order of the railroad commission was a violation of, and in conflict with Section 8 of Article One of the Constitution of the United States, which provides that Congress shall have power to regulate commerce with foreign nations and amongst the several states, and is a direct burden upon interstate commerce, and is an unnecessary interference with the speedy carriage of the mails. (Rec., 2, 5, 7.)

On this bill, a preliminary order was issued restraining the commission temporarily from enforcing, by suit or otherwise, its order so made requiring trains one and three to stop on flag in Magnolia. (Rec., 8.)

An answer and demurrer,sworn to, was filed by the railroad commission. (Rec., 8.) This answer appears not to have been marked filed by the clerk until nearly a year later, but the record shows that it was, in fact, used at the hearing of the motion in June, 1903.

On the 10th of June, 1903, the cause was heard on the motion for the issuance of a preliminary injunction, being heard on the pleadings, and affidavits and other proofs; and on the 17th day of July, 1903, the preliminary injunction was by the court ordered to issue. (Rec., 16.)

In connection with that order, and as the basis for it, his Honor presented an elaborate written opinion, which is found in the record, beginning at page 10.

On the 5th day of May, 1904, the commission filed its motion to dissolve the injunction (Rec., 17), and on the 2nd of June, 1904, it filed its supplemental answer. (Rec., 18.) The cause was then heard on the pleadings and evidence, testimony being taken orally by a stenographer in open court by agreement of parties. (Rec., 22.)

The Circuit Court thereupon rendered its decree on the 28th day of June, 1904, holding that the order of the commission requiring trains one and three to stop at Magnolia "was not an unlawful or unreasonable requirement, and that complainant is not entitled to relief," and thereupon dissolved the preliminary injunction, denied the prayer of complainant's bill, and dismissed the same. (Rec., 68.) No opinion was filed or delivered.

From that decree, an appeal was prayed by the railroad company to the Circuit Court of Appeals for the Fifth Circuit. There the case was argued on the jurisdictional points, as well as on the merits; and the Court of Appeals *took jurisdiction* and *reversed the Circuit Court on the merits.* (Rec., 72, 79.)

The statement of the case, and the opinion of the Court of Appeals were handed down by JUDGE SHELBY (Rec., 72, 77), who in stating the case, after reviewing the course of the proceeding before the commission, and the pleadings and evidence in the court below, said:

"*It does not appear from the evidence that the trains that stop there going south are not sufficient for the travel,* but the objection or complaint shown by the proof is that the trains *are not well equipped and that they leave at inconvenient times.* For example, one

witness said: 'If a fellow is accustomed to getting up at seven, he didn't like to get up at five.' Another said, when asked to give his reasons for wanting Nos. 1 and 3 to be required to stop: 'In the winter season, especially, I am very busy and always like to make as much time as possible. I do it on account of business and for the comfort there is in travel. They are better trains than any other, and I think my business would be facilitated. and I think it would be to the general interest of the town to have them stop.' *There was no important conflict in the evidence on material points.*"

The Court of Appeals held the order of the railroad commission to be invalid, reversed the decree of the Circuit Court, and remanded the cause, with instructions to enter a decree for the railroad company.

From that decree the railroad commission sued out a writ of error to this court.

BRIEF OF ARGUMENT.

THE MISSISSIPPI RAILROAD COMMISSION.

Pervading the entire argument for the appellants, is an assumption that the Mississippi Railroad Commission is a court; that a proceding before it is a suit; and that its findings are judicial determinations, with the weight of such judgments. Such, however, is not the fact. The most cursory examination of chapter 134 of the Mississippi Code of 1892, which creates that commission, will show that it is without many of the most necessary powers of a court. It can neither summon a witness, nor swear one; it cannot certify a bill of exceptions, nor enforce its orders by any process. The Supreme Court of Mississippi has expressly decided that it is no more than an administrative agency which exercises *quasi* judicial powers, and that its findings are only *prima facie evidence* that its decisions are right. To give its orders even that value, the findings must be set forth in writing.

Western Union Co., v. 74 Miss., 80, 92.

When, therefore, the appellants say in their "Statement of Case," as they do on page 3 of their brief, that the evidence on the hearing "before the commission was not preserved by bill of exceptions, and was not before the courts below"—and thereby convey a suggestion, unintentional, no doubt, that the railroad company is in some default in a failure to take such a bill, it is to be answered, simply, that there is no warrant in the law for such a bill, and no person au-

thorized to sign one. It would not, if taken, have been worth the paper on which it would be written.

So, again: when on page 3 of their brief the appellants refer to the fact that the railroad company filed its bill of injunction in the Circuit Court "without challenging this order by certiorari"—there is another similar suggestion. But of what avail would a certiorari be? It lies to review a record for error apparent on its face. As pointed out above, a hearing before the railroad commission is on *viva voce,* unsworn statements of volunteers, with none of the sanctions of testimony, and with no provision made by law for embodying even those unsworn statements in the record. It is true that in the case of *Railroad Co.* v. *Adams,* 38 So. Rep., 348 (77 Miss., 764, 777), there is a loose expression about the failure to sue out a certiorari; but it was merely *obiter,* and the same court, in a later stage of the same case, disregarded it utterly —*Railroad Co.* v. *Adams,* 81 Miss., 100, 103.

FIRST ASSIGNMENT OF ERROR—REPLY.

The Circuit Court of Appeals rightly took jurisdiction. The original bill by the railroad company placed the original jurisdiction of the Circuit Court on the two distinct grounds of (1) diversity of citizenship, and (2) an interference with interstate commerce, and the transmission of the mails, and the consequent unconstitutionality of the order of the railroad commission by which the trains were required to stop at Magnolia.

In such case the Court of Appeals may take jurisdiction.

American, etc., Refining Co. v. *New Orleans,* 181 U. S., 277.

Huguley Mfg. Co. v. *Galeton Mills,* 184 U. S., 290.

Spreckels Refining Co. v. *McClain,* 192 U. S., 397.

Field v. *Barber Asphalt Co.,* 194 U. S., 618, does not conflict with this position. That case only holds that where a case is decided adversely to both parties in distinct matters, and the questions were of such nature that the decision against one party was a non-federal question, while that against the other was on a constitutional question, and the latter party takes an appeal to this court, as he may do, then the other party may also cross-appeal to this court, notwithstanding the fact that he could not have done so in his own right alone. The appeal properly brought here by one of the litigants brings the whole case here. It only means that the appellate jurisdiction over a single case is not to be divided between both courts at the same time.

SECOND ASSIGNMENT OF ERROR—REPLY.

It is claimed that this is virtually a suit against the State, and, therefore, cannot be maintained because of the prohibition of the eleventh amendment to the Constitution of the United States. That it is not such a suit and that it can be maintained is clearly established by the following authorities:

Ex parte Tyler, 149 U. S., 167.

Reagan v. *Trust Co.*, 154 U. S., 362, 388.
Scott v. *Donald*, 165 U. S., 58, 67.
Adams Express Co. v. *Auditor*, 165 U. S., 195.
Smith v. *Ames*, 169 U. S., 466, 518.
Prout v. *Starr*, 188 U. S., 537.
Bank v. *Marye*, 191 U. S., 272.
Fargo v. *Hart*, 193 U. S., 490.

THIRD ASSIGNMENT OF ERROR—REPLY.

It is also claimed that there is no jurisdiction in the federal court, as such, to enjoin in this case, because a federal court is by the U. S. Rev. Stat., section 720, prohibited from issuing writs to "stay proceedings in any court of a state."

The sufficient answer has been made above; it is that the railroad commission is not, in any of its functions, a court; it is a mere administrative agency; and although it has some *quasi* judicial power, its essential functions are legislative.

Telegraph Co. v. *Railroad Commission*, 74 Miss., 80.
Railroad Co. v. *Adams*, 81 Miss., 90, 103.

FOURTH ASSIGNMENT OF ERROR—REPLY.

Under this assignment it is urged that the Court of Appeals "erred in construing section 4302 with said section 3550; and in holding that, jointly or severally, they violated Article 1, Sec. 8 of the Federal Constitution; and in holding that said trains Nos. 1 and 3 came within the purview of said commerce clause; and because thereof said order was invalid."

This assignment presents for consideration the merits of the case; and the law is found in the following decisions of this court:

Railroad Co. v. *Illinois,* 163 U. S., 142.
Gladson v. *Minnesota,* 166 U. S., 427.
Railroad Co. v. *Ohio,* 173 U. S., 285.
Railroad Co. v. *Illinois,* 177 U. S., 514.

The last case analyzes and sums up all of the others, and must be taken as an authoritative announcement of the law on the subject. Certain general principles are clearly and definitely declared.

A. Where the state law is general in its nature, and requires all trains to stop at all county sites, then the particular case under investigation must be considered and decided as if it raised the whole general question. The principles involved cannot be evaded by assailing the railroad's schedule in detail, and by arguing and claiming (as is done in the instant case) that to require the train to be stopped at one place only is a trivial matter; that it takes only three minutes, etc. (See Appellant's brief, 17.) That attempted evasion is precisely what was done in the *Big Four* case, 177 U. S., *supra.* There the mandamus required the stoppage, not at all county seats according to the general terms of the law, but at Hillsboro only; and yet this court, reversing the Supreme Court of the State, said:

"It is evident that the power attempted to be exercised under this statute would operate as a serious restriction upon the speed of trains engaged in interstate traffic, and might, in some cases, render it impossible for trunk lines running through the State of Illinois to compete with other lines running through

states in which no such restrictions were applied. If such passenger trains may be compelled to stop at county seats it is difficult to see why the legislature may not compel them to stop at every station—a requirement which would be practically destructive of through travel, where there were competing lines unhampered by such regulations."

It is clear that this effort to force a stop at Magnolia cannot be dealt with as if it were a question of stopping at Magnolia only. The question was not so dealt with in the case cited above. If that power be tolerated, it is manifest that the power of a railroad company to provide for its through travel, and to make fast schedules for that travel and for the mails, can be destroyed by continued and successive orders, each dealing with one little town alone. As was well said by Mr. Justice Brown, *supra*, "If such passenger trains may be compelled to stop at county seats it is difficult to see why the legislature may not compel them to stop at every station." And what the learned justice conceived to be a possible result in Illinois—a result "practically destructive" of through travel—is a fact immediately in sight in Mississippi, so far as the laws are concerned; for section 4302 of the Mississippi Code provides as follows:

"4302. Necessary depots to be maintained.—Every railroad shall establish and maintain such depots as shall be reasonably necessary for the public convenience, and shall stop such of the passenger and freight trains at any depot as the business and public convenience shall require."

And sections 4329 and 4331 make it the duty of the railroad commission to see that the laws are complied with, and provides penalties, and require the commission to enforce them.

Section 3550 of the chapter on "Railroads," it is true, applies to county seats only; but section 4302, in the chapter on "Supervision," expressly requires the stoppage of such of the passenger and freight trains at *any* depot as the business and public convenience shall require; and the commission are authorized and required to enforce that section. The powers of the commission, therefore, to order stoppages are not limited to county seats, but extend to any and all depots. At such depots as are not county seats that power extends only to cases where "the business and public convenience shall require"; but at county seats it exists without reference to any other fact than that they are county seats. That fact alone is, in effect, legislatively declared to be sufficient, and no further question of necessity, or of adequacy of service already enjoyed, can be material—the commission being given uncontrolled "discretion" in the premises.

It is exactly true, as his Honor, who presided in the Circuit Court observed in his opinion on his first decision (Rec., 15) that "If the commission can compel the trains No. 1 and No. 3 to stop at Magnolia after complainant furnishes a sufficient number of trains daily each way to accommodate all the local and through business along the line of the road, it is difficult to see why they may not compel them to stop all trains at every station."

And it is exactly true, as stated in the opinion of the Circuit Court of Appeals (Rec., 78, 79) that: "If these statutes are valid when applied to trains made up and scheduled for rapid interstate travel, then a state legislature has the power to prohibit such travel altogether," etc., for the direct effect of such

interferences would be a practical inhibition of such travel of that line.

As pointed out above this question is not merely one of a single stop at Magnolia, but is one of a broader nature; and it cannot be narrowed down to that by the simple process of taking up the little towns along the line of the road, one by one.

Also, it must be borne in mind that in the passage quoted above this court, speaking where the effort before it was to have the train stopped only at one place, declared it to be "evident" that the power attempted to be exercised would operate as a serious restriction on the speed, etc. It is idle for the commission to undertake to segregate the matter of a stoppage at Magnolia from the general question, and to deal with that stop alone, and to treat it as a matter of "three minutes" merely. The real question is the right of the commission to compel stops at Magnolia and other stations. In the Big Four case, *supra,* that was the precise objection made by the railroad company's answer (177 U. S., 515); and it was to that objection, although interposed in a case where the immediate object of the mandamus was to force a stop at only one place, that this court made the observations quoted above. And as pointed out above, under the Mississippi statutes the commission, if it can interfere with these limited trains at all, can stop them at "any depot."

Nor can the effect of the *Big Four* case, 177 U. S., *supra,* be avoided on the idea that the statutes in Mississippi do not require the trains to stop, but only empower the commission to require them to do so, at

the discretion of the commission. As to interference with the mails and with interstate commerce, it is the same thing in effect. What the legislature undertakes to authorize the commission to do, by delegation to it of authority, it does itself. How can the legislature commit to the commission an uncontrolled discretion to do what the legislature itself could not do?

B. Another general principle, or rather group of principles clearly established by the four leading cases cited above, and especialy by the *Big Four* case in 177 U. S., is that this question of the power of a state commission over the stoppages of interstate trains is not absolute but is subject to certain limitations imposed by the federal laws; also, that in determining what those limitations are, and the extent of them, regard is to be had of more than one interest; that several interests are to be consulted.

1. The railway company, as a business corporation in which stockholders and other have invested immense sums of money, have vested rights and interests which are entitled to protection, and to protection by federal law. As to this the court said in the Big Four case, above, on pp. 521, 522:

"If such passenger trains may be compelled to stop at county seats it is difficult to see why the legislature may not compel them to stop at every station—a requirement which would be practically destructive of through travel, where there were competing lines unhampered by such regulation. While, as we held in the Lake Shore case, railways are bound to provide primarily and adequately for the accommodation of those to whom they are directly tributary, and who not only have granted to them their franchise, but who may have contributed largely to the construction of the road, they are bound to do no more than this, and may

then provide special facilities for the accommodation of through traffic. We are not obliged to shut our eyes to the fact that competition among railways for through passenger traffic has become very spirited, and we think they have a right to demand that they shall not be unnecessarily hampered in their efforts to obtain a share of such traffic. It is evident, however, that neither the greater safety of their tracks, the superior comfort of their coaches or sleeping berths, nor the excellence of their tables would insure them such share if they were unable to compete with their rivals in the matter of time. The great efforts of modern engineering have been directed to combining safety with the greatest possible speed in transportation, both by land and water. The *public demand this; the railway* and steamship companies are anxious *in their own interests* to furnish it, *and local legislation ought not to stand in the way of it.*

"With no disposition whatever to vary or qualify the cases above cited, neither the conclusions of the court nor the tenor of the opinions are opposed to the principle we hold to in this case, that, after all local conditions have been adequately met, railways have the legal right to adopt special provisions for through traffic, and legislative interference therewith is unreasonable, and an infringement upon that provision of the Constitution which we have held requires that commerce between the states shall be free and unobstructed."

2. The travelling public also have rights and interests which are entitled to consideration and protection. The local travellers, and even those who travel from within the state to points out of the state, or from points outside to points within, are not all of the travelling public by any means. The large and increasing number of strictly through travellers demand, and have a right to, accommodations suited to their wants. Their routes are long and fatiguing, and their need of fast and unhampered schedules is great. Moreover,

there is no permanent line of demarkation between the persons who constitute the two classes of travellers; the local passenger of to-day will be the through traveler of to-morrow; and the very men who grumble in this case because 1 and 3 do not stop at Magnolia to accommodate their local trips, will grumble again when on their longer trips, if those trains do delay to stop at other little towns along the route. As to the rights of through travellers, it was said in the passage quoted above from the opinion in the Big Four case:

"While railways are bound to provide primarily and adequately for the accommodation of those to whom they are directly tributary * * * they are bound to do no more than this, and may then provide special facilities for the accommodation of through traffic. * * * After all local conditions have been adequately met, railways have the legal right to adopt special provisions for through traffic."

C. The United States government itself has rights and interests demanding protection, in the matter of the transportation of the mails. See

Illinois Central Railroad Co. v. *Illinois,* 163 U. S., 142, *supra.*

The court will note that the two trains in controversy here, are the same identical trains, of the same identical company, running over the same identical route, which were in controversy in that case. See page 152, where Mr. Justice Gray shows that the train about which he was speaking was "the fast mail train from Chicago to New Orleans." In that case, it was shown, just as in the Original Bill, as amended, in this case and in the record it is shown, that certain acts of Congress and of the state legislature bearing upon the subject, existed; and the "answer and demurrer"

filed in this cause by the railroad commission admits the existence of these statutes; indeed, it would have been useless to deny them, as the federal court sitting in Mississippi would have taken judicial knowledge of their existence.

Now in the Cairo case, cited above, 163 U. S., it is shown that under and by virtue of those acts of Congress it was "the manifest purpose of Congress to establish a railroad in the center of the continent, connecting the waters of the Great Lakes with those of the Gulf of Mexico, for the benefit of interstate commerce, as well as of the military and postal departments of the government of the United States." The opinion of the court then sets forth the provisions of the act of Congress, of June 15, 1866, Chapter 124, authorizing every railroad company in the United States to carry mails, etc.; and in the statement of the case by Mr. Justice Gray it was shown that, pursuant to a certain statute of Kentucky and other statutes of the States of Louisiana, Mississippi, and Tennessee, the bridge was constructed across the Ohio river, and the Chicago, St. Louis & New Orleans Railway Company (the lessor of this appellant) put on a daily fast mail train to run from Chicago to New Orleans, carrying passengers as well as the United States mail.

The statement of facts (page 149) also shows that in that case the railroad company offered to prove that the schedule of running time of the fast mail train had been fixed by the postoffice department of the United States, and could not be changed by the defendant, which evidence the court below had excluded;

while in the instant case, by Mr. Dunn, superintendent, it was shown that train No. 1 in question here carried mails for the United States between Chicago and New Orleans and "was put on upon an agreed time with the government, as I understand," which was "also the case with train number three." (See Rec., 23.)

Now in the Cairo case, there was an Illinois statute which required all regular passenger trains to stop at all county seats; and the complaint was that the fast mail train did not run into the city of Cairo, but passed it by, some three miles away. This court was unanimously of the opinion that the requirement of the Illinois statute was an unconstitutional hindrance and an obstruction of interstate commerce and of the carriage of the mails of the United States; and the court said:

"Upon the state of facts presented by this record, the duties of the Illinois Central Railroad Company were not confined to those which it owed to the State of Illinois under the charter of the company and other laws of the state, but included distinct duties imposed upon the corporation by the Constitution and laws of the United States.

"The state may doubtless compel the railroad company to perform the duty imposed by its charter of carrying passengers and cars between its termini within the state, but so long, at least, as that duty is adequately performed by the company, the state cannot under the guise of compelling its performance, interfere with the performance of paramount duties to which the company has been subjected by the Constitution and laws of the United States."

And again, the court said, on p. 154:

"A statute of the state which unnecessarily interferes with the speedy and uninterrupted carriage of

the mail of the United States, cannot be considered as a reasonable police regulation."

We insist that whatever may be the rule in regard to other railroads which have not been so aided and fostered by Congress, this railroad is under a plain obligation to carry and deliver the mails on the schedules fixed as to its mail trains, which obligation this court denominates "paramount." With it the state may not interfere except in case of necessity; and Justices Brewer and Shiras seem to hold that it cannot interfere at all. (See their concurring opinion in the Big Four case (177 U. S., 523.)

The force of the preceding observations cannot be avoided by saying that the grant made by Congress, etc., to the Illinois Central Railroad Company in Illinois, and that made by it to the Mobile & Ohio Railroad Company south of the Ohio river, cut no figure in this case, because the line of railroad from Cairo to New Orleans does not run over the old Mobile & Ohio route, and because the controversy in this case arises, not in regard to an Illinois town, but in regard to a Mississippi town. In the Big Four case, cited above, 177 U. S., it is shown on page 522, that a statute like this is obnoxious to the criticism made of the Louisiana statute in *Hall* v. *DeCuir*, 95 U. S., 405; and while it purports only to control the carrier when engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. We call the court's careful attention to that whole paragraph of the opinion. The run from Chicago to New Orleans is a single thing, and an interference with it in Mississippi is just as much an interference with it as a whole, as a similar interference would be if made in Illinois.

Neither can the force of the Cairo case, 163 U. S., above be avoided by suggesting that the rights of the State of Illinois in regard to the Illinois Central fast mail trains are one thing, while those of the State of Mississippi are another. In the year 1882 the legislature of Mississippi passed the law by which the Illinois Central Railroad came into that state. Chapter 559 of the Mississippi Laws of 1882 (page 1023) in Section 2 thereof provides, amongst other things, that:

"The Illinois Central Railroad Company is authorized to guarantee the bonds of the Yazoo & Mississippi Valley Railroad Company, and the bonds of the Canton, Aberdeen & Nashville Railroad Company, and to consolidate with the Chicago, St. Louis & New Orleans Railroad Company and the other two companies herein mentioned, and to lease each of said railroads for a term of years or in perpetuity upon such terms as may be agreed upon."

This express authority given to the Illinois Central Railroad Company to lease each of such railroads for a term of years or in perpetuity, upon such terms as may be agreed upon, being a direct authorization of this railroad company to come into the state as lessor, carries, by necessary operation, a consent that in coming into the state, it should come subject to such obligations as it already rested under to the federal government, and should carry the same out in good faith. In this respect the instant case is freed from the doubt which seemed to possess the court in the Cairo case as to how far postal arrangements could affect the power of the state to regulate stops. In the Cairo case the laws of Congress in question were enacted, and the postal contracts pursuant thereto were made, after the company was chartered by the state and its

subjection to state authority, whatever it might be, was established; while here, the state consented for the Illinois Central to come into the state with its federal postal obligations already on it.

PROPOSITION 3.

The evidence in this case is clear that there was no such necessity for a stoppage of mail trains No. 1 and No. 3 as to authorize the order made by the railroad commission.

The learned counsel for appellants are greatly in error when they say in their brief, on page 16, that the commission and the Circuit Court found that the passenger facilities at Magnolia were inadequate; and that such findings, *undisturbed by the Court of Appeals*, were conclusive.

1. The record does not show any such finding by the *commission*. No such question was submitted to that body. The petition on which it acted made no such allegation, but only stated that "Magnolia, being one of the most progressive towns in the state, and the county site of this county, we believe that we are entitled to have these trains to make regular stops here," etc. (Rec., 64.) Nor under the Mississippi statute (Sec. 3550 of Code), was any such finding necessary in order to produce the order made. Nor did the order made by the commission contain any such finding, or in fact any finding whatever. On its face, it is an arbitrary fiat, pure and simple. (Rec., 67.) Yet, the law in Mississippi is that a finding of the commission, in order to be even *prima facie* correct, must be in writing. *Miss. Code*, Sec. 4284; *Western Union Co.* v.

Commission, 74 Miss., 80, 92. One trouble about the case of plaintiff's in error, is that they are trying in this court (as they also tried below) a proposition wholly different from that submitted to the commission in the petition which forms the basis for the whole proceeding. They *argue* the case as if the order had been made under Sec. 4302. They themselves shift from one section to the other.

2. The record does not show any such finding by the Circuit Court. The opinion delivered on the application for preliminary injunction (Rec., 10) found the reverse; while the order made later, on the motion to dissolve, was not accompanied by any opinion, and the order itself only says that the order of the railroad commission "was not an unlawful or unreasonable requirement, and that complainant is not entitled to relief," etc. There is here only a statement of a legal conclusion, none of any facts, or of any result of the evidence: *non constat*, but that his Honor was captured by the argument of counsel made below and here, that the statute controls absolutely because it "confers police power on the commission, in its discretion, to consider conditions, and to *judicially* determine what trains shall so stop. This discretion must be the exercise of a *legal* discretion," etc. There are several suppositions as to what the Circuit Court may have had in view as the basis of its judgment that the order complained of was "not an unlawful or unreasonable requirement," without assuming that it found *as a fact* that the facilities at Magnolia were inadequate. Perhaps his Honor held the fact that it was a county site, coupled with the use of that poten-

tial and magical word "discretion" to be sufficient. Who knows? The *record* does not show.

However, there is this expression in the opinion of the Court of Appeals, which, if taken away from the statement of facts made by the court, and away from the remainder of the opinion, might lend some color to the propositions that the commission and the Circuit Court did so find; the Court of Appeals said (Rec., 78): "As the railroad commission and the Circuit Court *have made orders which indicate* that they" (*i. e.*, three south-bound passenger trains daily) "are not sufficient and that the town of Magnolia should have five daily trains going south, we think it well to examine other questions." Note, however, the carefully guarded expression employed by the court: not that the service of three trains was insufficient; not that the railroad commission and the Circuit Court had so found; but that they had *made orders which would so indicate.* This is a very different proposition. Clearly, the Court of Appeals, in the use of this expression, were not conceding or adjudging as a fact either that the service was insufficient, or that it was shown by the record that the railroad commission and the Circuit Court had so found. The court meant exactly what it said, and no more; and that was, that the orders made *indicated* or looked that way; and the observation was made *aguendo,* as the basis for a further consideration of an alternative aspect of the case—that of the constitutionality of the statutes, assuming the insufficiency of the service. For the Court of Appeals did consider fully the case before it as presented by the record, both on the facts in evidence and on the constitutionality of

the state statutes; *and they decided against the railroad commission on both propositions.*

That the Court of Appeals did consider the case fully on the evidence, and did decide it adversely to the railroad commission on the facts, is conclusively shown by the court's own statement of the case (Rec., 77), wherein it is said, as plainly as it could be put: that "*It does not appear from the evidence that the trains that stop there are insufficient,* but the objection or complaint *shown by the proof* is that the trains are not well equipped, and that they leave at inconvenient times; and that "There was no important conflict in the evidence on material points." Now, grant it to be true, as contended by plaintiffs in error, that the commission and the Circuit Court found that the passenger facilities at Magnolia were inadequate; it still is *not* true that such findings were "undisturbed by the Court of Appeals." For that court, as shown above, expressly found that "it does *not* appear from the evidence that the trains that stop there are insufficient," which is the only clear finding on that subject shown by the entire record.

We submit that this court will not undertake to review the decision of the Court of Appeals on that question of fact, based, as it manifestly was, on a careful examination of the evidence in the record; and that for this reason alone, and independently of the distinct question of the constitutionality of the state statutes, the judgment of the Court of Appeals will be affirmed.

In case, however, this court should determine to review that decision, and to go into the evidence for itself, we submit the following:

What the commission did was to order that trains 1 and 3 be stopped on flag. The consideration of the evidence, therefore, will be confined to such as bears on those two trains.

TRAIN NO. 1.

This train was put on the road in 1890, by arrangement with the government, and handles the mail between Chicago and New Orleans. It was intended to accommodate the strictly "through business," meaning travellers for long distances, between principal business centers, and interstate traffic (Rec., 23; Cairo case, 163 U. S., *supra.*)

After that train left Memphis, the stops made by it in running through the entire length of Mississippi, were these: At Sardis, necessary for water, at Grenada, to get the main line connection by way of Jackson, Tennessee; at Winona, the junction point for the Southern Railway; at Durant, the junction point for the Aberdeen branch and the Tchula district line; at Canton, a division terminal, where engines and crews were changed; at Jackson, the junction point with four other railroads; at Crystal Springs, necessary for water; at Hazlehurst; at Wesson; at Brookhaven; at Summit; at McComb City, the latter being another district terminal. (Rec., 26, 27, 32.)

On its south-bound run, this train left Jackson at 6:30 A. M.; passed Magnolia at 8:45 A. M.; reached New Orleans, at 11:25 A. M.; time of run from Magnolia to New Orleans, 2 hours, 40 minutes. At New Orleans it made connection with the Southern Pacific.

with a margin of 30 minutes (Rec., 34, 24; Exh. to Dunn's testimony).

This train stopped at Magnolia until about four months before the Commission made the order complained of (Rec., 73). At that time there was no train No. 5; and when No. 5 was put on, No. 1 ceased stopping at Magnolia (Rec., 38, 56). This number 5 adequately supplied the place of No. 1. It left Jackson at 2:25 A. M.; passed Magnolia at 5:15 A. M.; reached New Orleans at 7:50 A. M. Time of run from Magnolia to New Orleans, 2 hours, 35 minutes, being five minutes less than the time of No. 1; and it reached New Orleans 2 hours, 35 minutes earlier in the day than No. 1 (Exh. to Dunn's testimony). This was just as good a train as No. 1 in equipment practically. It carried first-class sleeper and good coaches (Rec., 41). It was a mail train also.

Of this train No. 5, it is erroneously stated on p. 6 of the brief for plaintiff in error that it "traverses Mississippi about 200 miles wholly by night;" when in fact (Rec., 40), it reached Magnolia at 5:37 A. M., after daylight. It is not practicable to run trains so that they will leave every town on the route at an ideally convenient hour. At some points people must get up early, at others stay up late and at others leave before breakfast.

The Magnolia people had, also, for their morning service down to New Orleans, local passenger No. 31, being the McComb City Accommodation. This train left McComb at 5:45 A. M.; passed Magnolia at 6:00 A. M.; reached New Orleans at 9:35 A. M. Time of run from Magnolia to New Orleans, 3 hours, 35 min-

utes. (Exh. to Dunn's testimony.) It consisted of a baggage car and two or three coaches, or whatever coaches were required to handle the business, and was put on expressly to accommodate the local travel into and out of New Orleans (Rec., 28).

In the brief for plaintiff in error it is erroneously stated, on page 7, that it starts, "without northern connection from McComb, seven miles north of Magnolia, at 5:45 A. M.;" when in fact it pulled out of McComb but a very few minutes after the arrival from the north of No. 5 above. Also it is said (same page) that it is a way station, of poor accommodations "and is not patronized by the better class of people;" which last statement is directly the reverse of the testimony (Rec., 41).

Thus the Magnolia people, after No. 1 was taken away, still had two daily morning trains to New Orleans, the only difference in service being that the time of No. 5 was 3 hours, 35 minutes earlier in the morning.

TRAIN NO. 3.

Train No. 3 is the Chicago & New Orleans Limited, and is the train of that class which passes through south Mississippi in the afternoon, instead of the morning; same sort of train as No. 1, doing same service (Rec., 23).

In passing through Mississippi it makes the same stops, except that the stop at Summit is made on Saturday only (Rec., 27, 39). It never stopped at Magnolia; the effort now being to make it do what was never done before.

On its south-bound run, this train left Jackson at 2:57 P. M. (Rec., 34); passed Magnolia at 5:20 P. M., and reached New Orleans at 7:55 P. M., time from Magnolia to New Orleans, 2 hours, 35 minutes (Exh. to Dunn's testimony). At New Orleans it made connection with the Southern Pacific on a margin of 1 hour and 5 minutes, and with the Louisville & Nashville for Mobile and Florida points on a margin of 15 minutes (Rec., 24, 35).

Train 23 (now called No. 33) gave the evening service, southward, for Magnolia. It passed Jackson at 3:45 P. M. (Rec., 39); passed Magnolia at 6:56 P. M., and reached New Orleans at 10:20 P. M. Time of run from Magnolia to New Orleans, 3 hours, 24 minutes.

It will be seen that 23 passed Magnolia in the afternoon 1 hour 36 minutes later than No. 3, and got to New Orleans 2 hours, 25 minutes late, taking 49 minutes longer to make the run, but getting to New Orleans at a reasonable hour.

Thus the Town of Magnolia has three daily passenger trains to New Orleans; two in the morning and one in the evening; all passing at reasonable hours. If this order is sustained, then Magnolia gets five south-bound daily trains—*a service enjoyed by no other place on the road except McComb,* which is the divisional station.

We shall now consider, briefly, some of the points of objection which appear, *from the evidence,* to have been made to the service stated above.

As to the morning train Number Five, substituted

for Number One, no possible objections could be made about speed because, as shown above, it makes the New Orleans run quicker than did Number One.

The only objections made to Number Five by Mr. Combs, who was the star witness for the defendant, is that it gets to Magnolia too early. Speaking about drummers, he says (Rec., 54):

"Number Five puts them there too early. Q. How much too early? A. If a fellow is accustomed to getting up at seven, he don't like to get up at five."

The only complaint made about Number Five by Mr. Lambkin (who was the only other witness for the defense) is found on page 61 of the record, and his complaint is that "Along the first of April (1903), he wanted to go to San Antonio" and wanted to get his trunks checked the evening before, which he could not do until after he had applied to Judge Price, the attorney of the road, the railroad office not being open. He also says that he had a young lady visiting him from Alexandria, and he could not get her trunk checked the evening before she left.

So far as Mr. Combs' notion about Number Five coming too early is concerned, it hardly seems necessary to say more than that early rising is one of the inconveniences necessarily incident to travel; it would be impossible so to arrange a schedule for any train but that somewhere along the line of its run people must get up early. The same objection might be made to Number One by the people living a little further north on the railroad.

The trouble about the trunks of which Mr. Lambkin speaks is fully explained in Mr. Dunn's testimony, on page 43 of the record, and in the testimony of Mr.

Groce, page 48 of the record. It grew out of a mere temporary condition, existing but for a few days, because of an oversight of a clerk in the office of Mr. Dunn, which was promptly rectified when the matter was called to his attention. It was a trouble about the station service, and had nothing to do with the sufficiency of the *trains*.

Now as to the objection made to Number Thirty-one, which was the McComb City accommodation. It came along at six o'clock, and got to New Orleans at 9:35, making the run in three hours and thirty-five minutes, which was only fifty-five minutes longer than the time of Number One.

Mr. Combs in his testimony makes quite an assault on this train. He says, "It is a very slow train" in the first place (Rec., 51); but how slow it is, is conclusively shown by its schedule, quoted above, showing a difference of only fifty-five minutes time in a run of one hundred miles.

He says, furthermore, that it is "out of date—antiquated" (Rec., 51), but he does not show how or why.

He objects most strenuously to the character of travel on that train. He says "It catches the laboring class, mill hands and truckers" (Rec., 52); also that "Some of the people look like cattle;" and when asked the question, "You are a sort of aristocratic people in Magnolia?" replies "A. When we pay full fare we like to ride decent. We don't like to ride with negroes and Dagoes;" and he insists that "Dagoes should have a separate compartment."

We submit that all of such talk is the merest trash.

Mr. Combs, indeed, seems to be a fastidious gentleman who doesn't like to ride on the same train with "negroes and Dagoes," but they are not cattle, although they may look like it to him; and the railroad company fails to see what right it has to draw any distinction between them and persons like Mr. Combs; or to keep them off of the limited trains if they want to ride on them; or to provide a limited train for the accommodation of persons with tastes like Mr. Combs to the exclusion of negroes and Dagoes; especially when the statutory law in Mississippi expressly declares that the accommodations for the different races shall be equal.

Then Mr. Combs complains of number thirty-one that the workmen who travel on the same are allowed to carry their tools. (Rec., 55.)

Mr. Lambkin (see Rec., 60) puts his objection to number thirty-one substantially on the same ground, although he expresses it a little more decently. He objects that the character of travel consists of "laborers and saw mill hands"; and "people out of factories"; and he says that "sometimes" it is filled with people, and maybe there would not be standing room; on the other hand, sometimes there are vacant seats. Mr. Lambkin prefers to ride on number five, which he did.

These objections, we submit, are purely matters of personal fastidiousness, and have nothing to do with the legal question, or the sensible business proposition of the accommodations offered to the public by these trains.

Now, as to the objections made to the evening train

number twenty-three (or thirty-three, as it is now numbered): As to this train Mr. Combs has absolutely nothing to say, except to call it "a little dirt train." (Rec., 55-56.) He makes no statement about its character, its speed, or its service.

Mr. Lambkin (page 59) says that it gives very poor service, and then talks about how on one occasion he undertook to go to New Orleans and got there after one o'clock; and says it was a train that was nearly always behind, and he finally quit going on it. That is his entire criticism; that he has been always unfortunate in being late on that train. How the train happened to be late when he was on it is unexplained, and especially is it not proven that the limited trains do not get late, and that similar complaints are not made about them. As a matter of fact, everybody knows that they are.

In brief, it is impossible to read the testimony of these two witness, who seem to have been all of the Magnolia people who took interest enough in this controversy to testify, without being impressed with the conviction that their quarrel with the service they get is not very frank, and is exaggerated (probably unintentionally, but through bias), with a view to capture the two south-bound limited trains if possible.

We submit that there is absolutely nothing in their testimony to justify the railroad commission in seriously interfering, as this order does, with the interstate trains and the transmission of the United States mails.

We invite the careful attention of the court to Mr. Dunn's testimony (Rec., 22), and to that of Mr. Mc-

Court (Rec., 44), showing the dangers and inconveniences of the interference sought to be made in this case.

One or two other points: Much was sought to be made out of the proposition that these trains stop at Hazelhurst, Wesson, and Summit; and it was urged that there is an invidious discrimination as against Magnolia; but Mr. Dunn explains all that, and shows in the first place that all three of these towns are towns of greater commercial importance; and, in the second place, and mainly, that all three of them lie north of McComb City, which is a divisional point, and consequently are in a different division of the railroad, and are further from New Orleans, and do not get the benefit of the extra train which is run from McComb into New Orleans, called the McComb City accommodation.

In this connection it is urged (plaintiff's brief, p. 16) that these stops deprive trains 1 and 3 of the protection of the commerce clause, and of the decision in 177 U. S., *supra*, because these trains are thereby used for a "local interstate business," etc. The idea is that a train, although it is designed for the fast through and interstate business, is not entitled to the protection of such a train from local interference with its runs, unless it refuses to do all intrastate business; and that if it stops at any towns, not being junction, watering or terminal points, then it can be made to stop at all stations. We submit that such is not the law; there is no reason or justice in it.

Much is sought, also, to be made out of the fact that since this litigation has begun, an arrangement was made whereby number three was stopped at Vaiden, the county seat of Carroll County, in north Mis-

sissippi. This Vaiden stop was made by order of the railroad commission (Rec., 68), and the company acceded to it, and did not resist it because of the following reasons:

Number twenty-three (the local) used to pass Vaiden at 1:30 P. M. A change was made in the schedule by which that train passed Vaiden six hours earlier, at 7:30 A. M. When that change of schedule took place, the Vaiden people thereby being deprived of *any* midday train, the company began to stop number three, specially, at Vaiden to let off the passengers from north of Grenada. The railroad commission took the matter up, and it was agreed that the company would comply with the request of the commission and would stop number three at Vaiden to take up passengers going to Jackson and south thereof (but not to take on passengers for points between Vaiden and Jackson). Number three was not to be stopped at Vaiden in order to take on passengers for any point at which it did not then already stop. (Rec., 45, 46.) It was a special arrangement made at the request of the railroad commission pending this litigation, in order to serve a recognized want, arising in entirely a different portion of the state, from a complication growing out of a change of schedule whereby an evening train into Jackson from north Mississippi was converted into a morning train, *for the convenience of all the upper part of the state,* the people from which could thereby run down to Jackson on an early train, and go home in the afternoon.

There is no similitude whatever between that instance and the matter involved in this case.

Suppose it were true, however, that these places were

favored by the railroad company (which we deny)—how does that concern this case? The question here is, and it is the only question, whether the service given to the people at Magnolia is so inadequate and so unreasonable as to create that case of necessity which will authorize the railroad commission to interfere with interstate trains and the [illegible] and uninterrupted transportation of the United States mails. On this question we respectfully submit that the case of the commission has utterly failed, and that the decree of the Court of Appeals should be affirmed.

On the trial (see brief of plaintiff in error, p. 7), much was sought to be made out of the fact that there were certain stations along the line of the road between which, if a man undertook to travel, he would have to lie over some hours at Jackson; for instance, between Pickens, north of Jackson, and Magnolia. We respectfully submit that in this there is no significance whatever, unless the railroad commission has the right to prohibit any train from going by any depot, however small, without stopping, and thereby forcing every train on the road to be converted into a local train of the strictest sort, and abolishing all arrangements for speedy through travel. It would be always possible to take any schedule that might be contrived, and find certain stations along the road between which the trips must be made with less expedition and convenience than are the trips between the more important stations. It would be impossible to arrange a schedule in any other way, unless every train is made to stop everywhere.

In Conclusion.

Reading the record carefully as a whole, it is apparent (and the court, in its statement of the case, quotes the testimony, and emphasizes it), that the real quarrel made with the service at Magnolia made by the only witnesses who appeared and testified, was, not with the number of the trains, or their sufficiency to transport the passengers presenting themselves, but was with the alleged want of exclusiveness and luxuriousness of the trains. The witnesses did not like the company of dagoes and negroes; did not like to travel on the same trains with mill people; did not like for the laborers to put their tools on the seats as they sometimes did; did not like to get up at five instead of seven, etc., etc.

We submit that the judgment should be affirmed.

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